

2003

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
4 DEPARTMENT NO. 505

5
6 LESLIE J. WHITELEY AND)
7 LEONARD WHITELEY,)
8 PLAINTIFFS,)
9 VS.) NO. 303184
10 RAYBESTOS-MANHATTAN, INC., ET)
11 AL.,)
12 DEFENDANTS.)
13 _____)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 WEDNESDAY, FEBRUARY 2, 2000
17 (VOLUME 16, PAGES 2003-2145)
18
19
20
21
22

23 REPORTED BY: JUDITH ANN OSSA, CSR 2310
24 OFFICIAL REPORTER
25
26
27
28

2004

1 APPEARANCES:
2
3

4 FOR THE PLAINTIFFS:

5 WARTNICK, CHABER, HAROWITZ & TIGERMAN
6 BY: MADELYN J. CHABER, ESQ.
7 ROBERT BROWN, ESQ.
8 MARTHA A.H. BERMAN, ESQ.
9 101 CALIFORNIA STREET, SUITE 2200
10 SAN FRANCISCO, CALIFORNIA 94111-5802

11 FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:
12
13

14 SHOOK, HARDY & BACON LLP
15 BY: DAVID K. HARDY, ESQ.
16 GERALD V. BARRON, ESQ.
17 LUCY E. MASON, ESQ.
18 ONE MARKET, STEUART TOWER, NINTH FLOOR
19 SAN FRANCISCO, CALIFORNIA 94105-1310.

20 FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:

21 WOMBLE, CARLYLE, SANDRIDGE & RICE
22 BY: JEFFREY L. FURR, ESQ.
23 200 WEST SECOND STREET
24 WINSTON-SALEM, NORTH CAROLINA 27101

25 HOWARD, RICE, NEMEROVSKI, CANADY,
26 FALK & RAKIN
27 BY: H. JOSEPH ESCHER III
28 THREE EMBARCADERO CENTER, 7TH FLOOR
29 SAN FRANCISCO, CALIFORNIA 94111-4065

30 FOR DEFENDANT METALCLAD INSULATION CORPORATION:

MISCIAGNA & COLOMBATTO
21 BY: GREGORY S. ROSSE, ESQ.
22 27 MAIDEN LANE, 4TH FLOOR
23 SAN FRANCISCO, CALIFORNIA 94108
24
25
26
27
28
2005

1 EXAMINATION OF PLAINTIFFS' WITNESSES
2

3 WITNESS NAME	PAGE
4 PATSY R. WHITTEKER.....	2018
5 CROSS-EXAMINATION.....	2019
5 CROSS-EXAMINATION.....	2036
6 REDIRECT EXAMINATION.....	2038
6 RICHARD W. POLLAY, PH.D.....	2042
7 DIRECT EXAMINATION.....	2042
7 DIRECT EXAMINATION (CONTINUED).....	2084

8 COURT EXHIBITS
9

10 EXHIBIT	PAGE
10 COURT EXHIBIT 3 11 RECEIVED IN EVIDENCE.....	2008

11 PLAINTIFFS' EXHIBITS
12

13 EXHIBIT	PAGE
13 PLAINTIFFS' EXHIBITS 44, 66, 79, 90, 108, 318, 331, 14 332, 397, 413, 451, 448, 451, 516, 571, 609, 807, 14 1009, 1017, 1036, 1040, 1055, AND 1138 15 RECEIVED IN EVIDENCE.....	2011
15 PLAINTIFFS' EXHIBITS 1033, 1034 & 1091 16 RECEIVED IN EVIDENCE.....	2012
16 PLAINTIFFS' EXHIBIT 165 17 RECEIVED IN EVIDENCE.....	2016
17 PLAINTIFFS' EXHIBIT 1856-A 18 MARKED FOR IDENTIFICATION.....	2017
18 PLAINTIFFS' EXHIBIT 1890 19 MARKED FOR IDENTIFICATION.....	2072
19 PLAINTIFFS' EXHIBITS 1860-1864, 1858-1859, 1888-1892 20 MARKED FOR IDENTIFICATION.....	2082
20 PLAINTIFFS' EXHIBITS 1866-1873, 1875-1886 21 MARKED FOR IDENTIFICATION.....	2084
21 PLAINTIFFS EXHIBIT 1869 22 RECEIVED IN EVIDENCE.....	2093
22 PLAINTIFFS' EXHIBIT 1885 23 RECEIVED IN EVIDENCE.....	2094
23 PLAINTIFFS' EXHIBIT 1884 24 RECEIVED IN EVIDENCE.....	2098
24 PLAINTIFFS' EXHIBIT 1873 25 RECEIVED IN EVIDENCE.....	2100
25 PLAINTIFFS' EXHIBIT 1867 26 RECEIVED IN EVIDENCE.....	2104
26 PLAINTIFFS' EXHIBIT 1871 27 RECEIVED IN EVIDENCE.....	2105
27 PLAINTIFFS' EXHIBIT 1872 28 RECEIVED IN EVIDENCE.....	2106

28
2006

1 PLAINTIFFS' EXHIBITS

EXHIBIT PAGE

2	PLAINTIFFS' EXHIBIT 1886	
3	RECEIVED IN EVIDENCE.....	2109
4	PLAINTIFFS' EXHIBITS 1875-1876, 1878 & 1880	
5	RECEIVED IN EVIDENCE.....	2114
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

2007

1 WEDNESDAY, FEBRUARY 2, 2000 9:10 A.M.
2 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
3 COURTROOM, OUTSIDE THE PRESENCE OF THE JURY)
4 THE COURT: WE ARE ON THE RECORD OUTSIDE THE
5 PRESENCE OF THE JURY.

6 I UNDERSTAND FROM A DISCUSSION OFF THE RECORD
7 THAT THE PARTIES WANT TO HAVE MADE AS COURT EXHIBIT 3, A
8 DOCUMENT THAT'S ENTITLED "FIRST SUPPLEMENT TO PLAINTIFFS'
9 EXHIBIT SUBJECT TO JANUARY 27, 2000 STIPULATION OF
10 COUNSEL. "

11 AM I CORRECT THAT THE PARTIES WANT THAT TO BE
12 COURT EXHIBIT 3?

13 MS. CHABER: YES.

14 MS. MASON: YES, YOUR HONOR.

15 THE COURT: AND THAT IS A DOCUMENT WHICH I
16 UNDERSTAND SETS FORTH A LIST OF EXHIBITS WHICH THE PLAINTIFF
17 IS OFFERING INTO EVIDENCE; CORRECT?

18 MS. CHABER: YES.

19 THE COURT: AND THE DEFENDANTS' ONLY OBJECTION
20 TO IT IS THE OBJECTION THAT THIS IS HEARSAY FOR THE REASONS
21 PREVIOUSLY DISCUSSED, AS WE HAVE DEFINED THAT TERM;
22 CORRECT?

23 MS. MASON: YES, YOUR HONOR.

24 MS. CHABER: YES.

25 THE COURT: AND SO I AM OVERRULING THAT
26 OBJECTION, AGAIN SUBJECT, OBVIOUSLY, TO THE MOTION TO
27 STRIKE, WHICH WILL GO WITHOUT SAYING IN THE FUTURE IN THIS
28 CASE AS TO THAT CATEGORY OF DOCUMENTS.

2008

1 THOSE DOCUMENTS ARE ALL RECEIVED INTO EVIDENCE.
2 (DOCUMENT MORE PARTICULARLY
3 LISTED IN THE INDEX RECEIVED

4 IN EVIDENCE AS COURT
5 EXHIBIT # 3)

6 THE COURT: AND I UNDERSTAND THAT THE PARTIES
7 WANT TO HANDLE THIS BY MY JUST TELLING THE JURY THAT CERTAIN
8 DOCUMENTS HAVE BEEN ADMITTED IN THEIR ABSENCE AS A
9 CONVENIENCE TO THEM.

10 AND I WILL ALSO REFERENCE THAT SOME OF THEM HAVE
11 DELETIONS OR INFORMATION REMOVED. AND I WILL EXPLAIN THE
12 CIRCUMSTANCE TO THEM.

13 AND I GATHER THAT'S THE JOINT REQUEST OF THE
14 PARTIES, THAT WE HANDLE A NUMBER OF THESE DOCUMENTS IN THAT
15 FASHION; CORRECT?

16 MS. CHABER: YES.

17 MS. MASON: YES.

18 THE COURT: SO I WILL DO THAT.

19 NOW WE CAN GO OFF THE RECORD

20 (RECESS TAKEN FROM 9:12 TO 9:30 A.M.)

21 THE COURT: WE ARE BACK ON THE RECORD.

22 MS. CHABER: YES. THE FOLLOWING DOCUMENTS ARE
23 OFFERED BY THE PLAINTIFF. 44, 66, 79, 90.

24 THE COURT: WHAT?

25 MS. CHABER: I'M SORRY.

26 THE COURT: WAIT A MINUTE.

27 MS. CHABER: I HAVE THEM IN NUMBER ORDER.

28 THE COURT: YOU HAVE THEM IN A DIFFERENT ORDER

2009 NUMBER. 44?

1 MS. CHABER: YES. 66.

2 THE COURT: OKAY.

3 THE COURT: WHAT WAS THE NEXT ONE? 79?

4 MS. CHABER: 79.

5 THE COURT: LET ME ASK YOU TO GO SLOWLY. I'M
6 GOING TO MAKE A NOTE OF THIS. 79.

7 MS. CHABER: 80. EXCUSE ME. STRIKE 80.

8 90 IS WHAT I MEANT TO SAY.

10 THE COURT: 90. OKAY.

11 MS. CHABER: 108.

12 THE COURT: OKAY.

13 MS. CHABER: 165.

14 THE COURT: LET'S NOT DO 165 NOW.

15 MS. CHABER: YOU MEAN TO SKIP IT?

16 THE COURT: LET'S COME BACK TO THAT, BECAUSE
17 THERE'S AN OBJECTION TO THAT ONE.

18 MS. CHABER: OKAY. 318, 331.

19 THE COURT: HOLD ON.

20 MS. CHABER: I'M SORRY.

21 THE COURT: 331. WE DID 108.

22 MS. CHABER: AND THEN WE SKIPPED OVER TO --

23 THE COURT: 318. JUST ONE SECOND. AND THEN

24 331.

25 AND THEN NEXT?

26 MS. CHABER: 332.

27 THE COURT: YES.

28 MS. CHABER: 397.

2010 THE COURT: YES.

1 MS. CHABER: 413.

2 THE COURT: YES.

3 MS. CHABER: 448.

4 THE COURT: YES.

5 MS. CHABER: 451.

6 THE COURT: YES.

7 MS. CHABER: 516.

9 THE COURT: YES.
10 MS. CHABER: 571.
11 THE COURT: YES.
12 MS. CHABER: 609.
13 THE COURT: YES.
14 MS. CHABER: 807.
15 THE COURT: YES.
16 MS. CHABER: 1009.
17 THE COURT: YES.
18 MS. CHABER: 1017.
19 THE COURT: YES.
20 MS. CHABER: THERE ARE TWO DOCUMENTS COMING UP
21 THAT HAVE LIMITING INSTRUCTIONS, THAT THEY WOULD BE OFFERED
22 FOR STATE OF MIND AND NOT FOR THE TRUTH OF THE MATTER.
23 BUT IF YOU WANT ME TO PUT THOSE AT THE END, THERE
24 ARE ACTUALLY THREE THAT FALL INTO THAT CATEGORY.
25 THE COURT: LET'S DO THOSE AT THE END.
26 MS. CHABER: OKAY. 1036, 1043, 1055, 1138.
27 THE COURT: IS THERE ANY OBJECTION TO ANY OF
28 THOSE?
2011

1 MS. MASON: NO, YOUR HONOR.
2 THE COURT: OKAY. SO THESE ARE THE DOCUMENTS
3 THAT ARE RECEIVED WITHOUT LIMITATION?
4 MS. CHABER: YES.
5 THE COURT: 44, 66, 79, 90, 108, 318, 331, 332,
6 397, 413, 451, 448, 451, 516, 571, 609, 807, 1009, 1017,
7 1036, 1040, 1055, AND 1138; CORRECT?
8 MS. CHABER: YES.
9 MS. MASON: YES.
10 THE COURT: OKAY.
11 (DOCUMENTS MORE PARTICULARLY
12 LISTED IN THE INDEX RECEIVED
13 IN EVIDENCE AS PLAINTIFFS'
14 EXHIBIT #S 44, 66, 79, 90, 108,
15 318, 331, 332, 397, 413, 451,
16 448, 451, 516, 571, 609, 807,
17 1009, 1017, 1036, 1040, 1055,
18 & 1138)

19 THE COURT: NOW, THERE'S THREE OF THESE YOU'RE
20 OFFERING SUBJECT TO A LIMITING INSTRUCTION. YOU BOTH -- I
21 GATHER YOU AGREE IT SHOULD GO INTO EVIDENCE SUBJECT TO A
22 LIMITING INSTRUCTION.

23 WHEN DO YOU WANT ME TO GIVE THAT LIMITING
24 INSTRUCTION? I GUESS THAT'S --

25 MS. CHABER: ACTUALLY, IT WAS FROM MR. ESCHER.

26 THE COURT: DO YOU WANT TO ASK ME FOR THEM AT
27 THE TIME THE DOCUMENTS ARE REFERENCED AS OPPOSED TO MAKING A
28 STATEMENT AT THE BEGINNING HERE, WHEN THEY WON'T KNOW WHAT

2012
1 THOSE DOCUMENTS ARE?
2 MR. ESCHER: THE FORMER, YOUR HONOR.
3 THE COURT: THEN WILL YOU UNDERTAKE THE BURDEN
4 OF REMINDING ME WHEN THERE IS A REFERENCE TO THE DOCUMENT,
5 THAT THAT HAS BEEN RECEIVED ONLY FOR A LIMITED PURPOSE, AND
6 THEN I'LL SO INSTRUCT THE JURY?
7 MR. ESCHER: I WILL DO MY BEST, YOUR HONOR.
8 THE COURT: IS THAT YOUR PREFERENCE AS TO HOW WE
9 SHOULD HANDLE THAT?
10 MR. ESCHER: YES.
11 THE COURT: THE THREE ARE --
12 MS. CHABER: 1033, 1034.
13 THE COURT: 10 --

14 MS. CHABER: EXCUSE ME. IN OTHER WORDS, 1033.
15 THE COURT: YES. 1034?
16 MS. CHABER: YES.
17 THE COURT: AND 1091 IS THE OTHER.
18 MS. CHABER: AND 1091 IS THE OTHER.
19 THE COURT: OKAY. ANY OBJECTION TO THOSE BEING
20 RECEIVED, SUBJECT TO THE LIMITING INSTRUCTION, WHICH I
21 SHOULD GIVE AT THE TIME THAT THE DEFENSE ASKS FOR IT?
22 MR. ESCHER: NO, YOUR HONOR.
23 THE COURT: THOSE THREE ARE RECEIVED.
24 (DOCUMENTS MORE PARTICULARLY
25 LISTED IN THE INDEX RECEIVED
26 IN EVIDENCE AS PLAINTIFFS'
27 EXHIBIT #S 1033, 1034 & 1091)
28 THE COURT: IS THE LIMITING INSTRUCTION THAT
2013
1 THEY'RE NOT RECEIVED FOR THE TRUTH OR ACCURACY OF THE
2 INFORMATION IN THEM BUT FOR SOME OTHER PURPOSE?
3 MR. ESCHER: YES, YOUR HONOR.
4 THE COURT: AND WHAT IS THE OTHER PURPOSE, JUST
5 SO I KNOW?
6 MS. CHABER: STATE OF MIND.
7 THE COURT: STATE OF MIND OF?
8 MS. CHABER: OF THE DEFENDANTS. THE STATE OF
9 MIND OF R.J. REYNOLDS, SPECIFICALLY.
10 WE GET INTO THIS PROBLEM, BECAUSE I KNOW YOU WANT
11 THIS VERY NARROW.
12 THE COURT: WHATEVER THE STIPULATION IS, THAT'S
13 THE STIPULATION.
14 IT'S OFFERED AS EVIDENCE OF THE STATE OF MIND OF
15 R.J. REYNOLDS?
16 MR. ESCHER: YES, YOUR HONOR.
17 THE COURT: OKAY. THEN I'LL DO THAT.
18 JUST PLEASE REMIND ME AT THE TIME THAT THAT'S
19 WHAT THE AGREEMENT IS ON THAT.
20 OKAY. LET'S GO OFF THE RECORD FOR A MINUTE.
21 (DISCUSSION OFF THE RECORD)
22 THE COURT: BACK ON THE RECORD.
23 MS. CHABER: DOCUMENT 165.
24 MS. MASON: YOUR HONOR, PHILIP MORRIS HAS AN
25 OBJECTION TO THAT EXHIBIT WHICH WE DISCUSSED OFF THE
26 RECORD. AND THE OBJECTION IS HEARSAY, FOUNDATION AND 352.
27 THE COURT: THE HEARSAY OBJECTION IS THE SAME
28 HEARSAY OBJECTION THAT WE DISCUSSED OUTSIDE THE PRESENCE OF
2014
1 THE JURY; RIGHT?
2 MS. MASON: THAT IT'S NOT A BUSINESS RECORD,
3 YOUR HONOR.
4 SHE DIDN'T -- WHAT SHE SAID WAS NOT SAID WITHIN
5 THE SCOPE OF HER EMPLOYMENT, THE SCOPE OF HER AUTHORITY AT
6 PHILIP MORRIS.
7 THE COURT: AND WHAT IS YOUR RESPONSE TO THAT,
8 MS. CHABER?
9 MS. CHABER: THAT IT'S A STATEMENT. IT'S A
10 BUSINESS RECORD. IT'S CONTAINED WITHIN THEIR FILES, AND
11 THERE'S NO EVIDENCE THAT SHE IS ACTING OUTSIDE THE SCOPE OF
12 HER AUTHORITY.
13 THE COURT: WAIT. WE HAVE DIFFERENT ISSUES
14 HERE.
15 THIS HASN'T BEEN SHOWN TO BE A BUSINESS RECORD.
16 THE FACT THAT IT'S FOUND IN THE FILES DOES NOT MAKE IT A
17 BUSINESS RECORD.
18 I'M NOT SURE THAT THAT'S REALLY THE OBJECTION,

19 THOUGH, THAT'S BEING MADE TO IT. I THINK THE OBJECTION, IF
20 I UNDERSTAND IT, IS DIFFERENT THAN THAT.

21 AM I RIGHT OR WRONG ABOUT THAT?

22 MS. MASON: YOUR HONOR, THE OBJECTION IS THAT
23 BARBARA REUTER, THE AUTHOR OF THAT DOCUMENT, DID NOT -- WAS
24 NOT EMPLOYED BY PHILIP MORRIS TO SPEAK ON THE AREAS OF
25 ADDICTION. SHE DIDN'T DO ANY WORK IN THE ADDICTION AREA.

26 FOR HER, FOR A DOCUMENT WITH THOSE THOUGHTS OF
27 HERS IN IT ON ADDICTION TO BE A BUSINESS RECORD, I THINK YOU
28 WOULD HAVE TO FIND THAT SHE WAS SPEAKING WITHIN THE SCOPE OF

2015 1 HER EMPLOYMENT AT PHILIP MORRIS.

2 THE COURT: WHAT WAS HER POSITION AT PHILIP
3 MORRIS?

4 MS. CHABER: SHE WAS A MARKETING PERSON. AND
5 SHE WAS SPEAKING WITH RESPECT TO SALES AND MARKETING.

6 AND SHE WAS SPEAKING OF THE ADDICTIVE PROPERTIES
7 AS A PART OF THE SALES AND MARKETING ANALYSIS THAT THEY
8 MAKE.

9 THE COURT: I UNDERSTAND -- AM I CORRECT ABOUT
10 THIS? -- I UNDERSTAND THAT THE ONLY OBJECTION THAT'S MADE TO
11 THIS IS THAT THIS WAS PREPARED BY A MARKETING PERSON, WHO IS
12 PURPORTING TO STATE INFORMATION OF A SCIENTIFIC NATURE, AND
13 YOUR OBJECTION IS THAT A MARKETING PERSON HAS NOT BEEN SHOWN
14 TO BE QUALIFIED TO MAKE THOSE STATEMENTS OF A SCIENTIFIC
15 KIND. I UNDERSTAND THAT TO BE THE ONLY OBJECTION.

16 AM I CORRECT ABOUT THAT?

17 MS. MASON: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: ALL RIGHT. THAT I'M GOING TO
19 OVERRULE, BECAUSE IT'S AGREED THAT THIS WAS A MARKETING
20 PERSON AND THAT THE SUBJECT MATTER OF THIS IS MARKETING.

21 AND SO I'M GOING TO OVERRULE THE VARIOUS
22 OBJECTIONS. AND I'VE DONE THE 352 WEIGHING. BECAUSE
23 OTHERWISE, WE WOULD BE IN A SITUATION WHERE A MARKETING
24 PERSON COULDN'T SAY ANYTHING THAT WAS SCIENTIFIC AND A
25 SCIENTIFIC PERSON COULDN'T SAY ANYTHING ABOUT MARKETING,
26 WHEREAS, IN REALITY, IT MAY WELL BE THAT THE MARKETING
27 PEOPLE HAVE IN MIND SCIENTIFIC CONSIDERATIONS DURING THE
28 COURSE OF THEIR MARKETING.

2016

1 AT LEAST, THAT IS INFORMATION THAT THE JURY IS
2 ENTITLED TO EVALUATE TO DETERMINE, RATHER THAN THE COURT, IN
3 A JURY TRIAL.

4 MS. MASON: THANK YOU.

5 THE COURT: OKAY. 165 IS RECEIVED
6 (DOCUMENT MORE PARTICULARLY
7 LISTED IN THE INDEX RECEIVED
8 IN EVIDENCE AS PLAINTIFFS'
9 EXHIBIT 165)

10 THE COURT: OFF THE RECORD.

11 (DISCUSSION OFF THE RECORD)

12 THE COURT: BACK ON THE RECORD.

13 WHEN DR. FOGEL WAS TESTIFYING ON DIRECT
14 EXAMINATION, HE DID A SECOND DRAWING THAT HASN'T BEEN MARKED
15 FOR IDENTIFICATION.

16 WHY DON'T WE MARK THAT FOR IDENTIFICATION.

17 (DISCUSSION OFF THE RECORD)

18 THE COURT: LET'S GO BACK ON THE RECORD.

19 WHILE WE WERE OFF THE RECORD, COUNSEL AGREED THAT
20 WE CAN APPROPRIATELY MARK THIS PAGE AS 1856-A, SINCE 1856
21 WAS DR. FOGEL'S FIRST DRAWING.

22 AND, FOR THE RECORD, YOU ALL AGREE WITH THAT
23 MARKING?

24 MS. CHABER: YES.
25 MS. MASON: YES.
26 MR. BROWN: I BELIEVE WHAT I'M POINTING TO, THIS
27 IS 1856.
28 MS. CHABER: YES. I PUT IT THERE.

2017 1 (DOCUMENT MORE PARTICULARLY
2 LISTED IN THE INDEX MARKED
3 FOR IDENTIFICATION PLAINTIFFS'
4 EXHIBIT # 1856-A)
5 THE COURT: OFF THE RECORD.
6 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
7 COURTROOM, IN THE PRESENCE OF THE JURY)
8 THE COURT: GOOD MORNING, EVERYBODY. BEFORE WE
9 START WITH THE TESTIMONY, LET ME JUST EXPLAIN SOMETHING TO
10 YOU.

11 THE LAWYERS HAVE BEEN COOPERATING WITH EACH OTHER
12 AND WITH THE COURT IN A WAY SO THAT WE COULD HANDLE THESE
13 DOCUMENTS AND STILL TAKE THE MINIMUM AMOUNT OF YOUR TIME
14 WHILE WE DEALT WITH ANY LEGAL ISSUES CONCERNING THE
15 DOCUMENTS.

16 AND AS A RESULT OF THAT, A NUMBER OF DOCUMENTS
17 HAVE BEEN RECEIVED INTO EVIDENCE IN A WAY THAT WE ARE NOT
18 GOING TO TAKE YOUR TIME OUT HERE TO RECITE THE NUMBERS OF
19 THOSE DOCUMENTS, BECAUSE IF THEY ARE IN EVIDENCE, THEN THE
20 LAWYERS WILL REFER TO THEM, AND THAT WAY WE'LL KNOW ABOUT
21 THEIR STATUS.

22 SO THE BOTTOM LINE IS THAT A NUMBER OF DOCUMENTS
23 HAVE ALREADY BEEN ADMITTED AND RECEIVED INTO EVIDENCE IN
24 YOUR ABSENCE, IN AN EFFORT, BASICALLY, NOT TO TAKE UP YOUR
25 TIME AND ENERGY LISTENING TO A BUNCH OF HOUSEKEEPING TYPE OF
26 LANGUAGE THAT WE WOULD ENGAGE IN OURSELVES.

27 WITH RESPECT TO THOSE DOCUMENTS, ON SOME OF THEM,
28 CERTAIN INFORMATION HAS BEEN DELETED OR REMOVED OR REDACTED

2018 1 FROM THE DOCUMENTS. SOMETIMES THAT INFORMATION WAS REMOVED
2 BECAUSE ALL OF THE LAWYERS AGREED THAT IT WAS IRRELEVANT AND
3 HAD NOTHING TO DO WITH THE CASE. OTHER TIMES, I MADE
4 THAT RULING, THAT IT HAD NOTHING TO DO WITH THIS CASE.

5 SO IF YOU ARE IN THE JURY ROOM AND YOU'RE LOOKING
6 AT THE DOCUMENTS OR YOU SEE THEM ON THE SCREEN OR HEAR ABOUT
7 THEM AND THERE IS INFORMATION MISSING, YOU MUST NOT
8 SPECULATE ABOUT WHAT IT WAS OR WHY IT'S MISSING. THAT WAS
9 JUST THE PRODUCT OF EITHER AGREEMENTS OR RULINGS THAT THAT
10 INFORMATION HAD NOTHING TO DO WITH THIS CASE AT ALL.

11 SO DON'T DRAW ANY INFERENCE OR IMPLICATIONS OR
12 ANYTHING ABOUT MISSING INFORMATION. IT IS A PERFECTLY
13 NORMAL, APPROPRIATE, PROPER PART OF THE CASE THAT THAT HAS
14 BEEN REMOVED. AND SO DON'T SPECULATE ABOUT WHAT IT WAS OR
15 WHY IT WAS REMOVED.

16 THE BOTTOM LINE IS, THE INFORMATION THAT WAS
17 REMOVED HAS NOTHING TO DO WITH THIS CASE OR WITH ANY JOB
18 THAT WE'RE ASKING YOU TO DO ON THE CASE EITHER.

19 OKAY. I THINK WE ARE READY TO PICK UP WITH
20 MS. PATSY WHITTEKER, AND WE HAD JUST COMPLETED THE DIRECT.

21 AND I THINK YOU WERE ABOUT TO START, MS. MASON,
22 ON CROSS.

23 MS. MASON: THANK YOU.
24 FURTHER TESTIMONY OF
25 PATSY R. WHITTEKER,
26 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
27 PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:
28

2019

1 CROSS-EXAMINATION

2 BY MS. MASON: Q. GOOD MORNING,

3 MRS. WHITTEKER.

4 A. GOOD MORNING.

5 Q. MY NAME IS LUCY MASON.

6 YOU AND I HAVE NOT MET BEFORE.

7 A. PARDON. WHAT DID YOU SAY?

8 Q. MY NAME IS LUCY MASON. I JUST WANTED TO
9 INTRODUCE MYSELF, BECAUSE YOU AND I HAVE NOT MET BEFORE.

10 A. RIGHT.

11 Q. MRS. WHITTEKER, I HOPE TO BE BRIEF WITH YOU THIS
12 MORNING.

13 LET'S START WITH SOME OF THE TESTIMONY YOU GAVE
14 YESTERDAY, MA'AM.

15 IF I RECALL IT CORRECTLY, IT WAS YOUR TESTIMONY
16 THAT DURING THE TIME PERIOD THAT YOUR DAUGHTER LESLIE WAS
17 GROWING UP, THAT YOU DID NOT BELIEVE THAT CIGARETTE SMOKING
18 WAS DANGEROUS.

19 DID I GET THAT RIGHT, MA'AM?

20 A. YES, THAT'S CORRECT.

21 Q. AND IN FACT, I THINK YOU ALSO TOLD THIS JURY,
22 MRS. WHITTEKER, YOU DIDN'T BELIEVE THAT SMOKING COULD LEAD
23 TO DEATH UNTIL SOMETIME IN THE 1990S.

24 IS THAT ALSO RIGHT, MA'AM?

25 A. THAT'S CORRECT.

26 Q. LET'S TALK BRIEFLY FOR A MINUTE, MRS. WHITTEKER,
27 ABOUT WHAT YOU KNEW ABOUT SMOKING AND WHEN YOU KNEW IT.

28 MR. WHITTEKER HAD AN OLDER BROTHER NAMED ROY?

2020

1 A. YES.

2 Q. AND MR. ROY WHITTEKER IS NO LONGER ALIVE; IS THAT
3 RIGHT, MA'AM?

4 A. YES.

5 Q. AND MR. ROY WHITTEKER WAS A HEAVY SMOKER, WAS HE
6 NOT?

7 A. AS FAR AS I KNOW.

8 Q. AND HE DIED FROM LUNG CANCER, DIDN'T HE, MA'AM?

9 A. THAT'S WHAT I'M TOLD.

10 Q. AND YOU KNEW THAT HIS LUNG CANCER DEATH WAS
11 ATTRIBUTED TO HIS SMOKING CIGARETTES, DIDN'T YOU, MA'AM?

12 A. THAT'S WHAT I WAS TOLD.

13 Q. IN FACT, MR. WHITTEKER TOLD YOU THAT, DIDN'T HE?

14 A. YES.

15 Q. AND MR. ROY WHITTEKER DIED SOMETIME WHILE YOU
16 WERE STILL LIVING IN VENTURA; IS THAT RIGHT?

17 A. YES.

18 Q. AND YOU LIVED ON ENTRADA DRIVE IN VENTURA FROM
19 THE TIME YOU WERE MARRIED SOMETIME IN THE 1950S UNTIL 1974;
20 IS THAT RIGHT?

21 A. FROM 1955 UNTIL 1974.

22 Q. AND MR. ROY WHITTEKER DIED FROM LUNG CANCER FROM
23 SMOKING SOMETIME DURING THAT TIME PERIOD; IS THAT RIGHT?

24 A. I DON'T REMEMBER WHAT TIME THAT WAS. I JUST
25 REMEMBER I DIDN'T KNOW HIM WELL.

26 Q. BUT YOU REMEMBER THAT IT WAS BEFORE YOU MOVED OUT
27 OF YOUR HOME IN VENTURA?

28 A. NO, I DON'T REMEMBER WHAT TIME IT WAS.

2021

1 Q. DO YOU REMEMBER GIVING YOUR DEPOSITION IN THIS
2 CASE, MA'AM? DO YOU REMEMBER BEING ASKED SOME QUESTIONS IN
3 OJAI NOT LONG AGO?

4 A. YES, I DO.

5 Q. MRS. WHITTEKER, I'M GOING TO HAND YOU A COPY OF
6 YOUR DEPOSITION.

7 MRS. WHITTEKER, YOU GAVE THIS DEPOSITION SOMETIME
8 IN NOVEMBER OF LAST YEAR.

9 DO YOU REMEMBER THAT?

10 A. YES, I REMEMBER.

11 Q. AND MR. BROWN WAS THERE WITH YOU THAT DAY?

12 A. YES.

13 Q. AND YOU WERE UNDER OATH THAT DAY; DO YOU REMEMBER
14 THAT, MA'AM?

15 A. YES, I DO.

16 Q. OKAY. I PROPOSE TO READ PAGE 127, LINES 1
17 THROUGH 13.

18 IN FACT, I BETTER START READING AT 126, LINE 17.

19 A. EXCUSE ME. WHAT PAGE DID YOU SAY?

20 Q. 126.

21 MR. BROWN: LINE WHAT?

22 MS. MASON: I BETTER START AT LINE 17.

23 MR. BROWN: YES, THERE WILL BE AN OBJECTION.

24 THE COURT: WHAT?

25 MR. BROWN: HEARSAY.

26 THE COURT: WHAT?

27 MR. BROWN: HEARSAY.

28 THE WITNESS: OKAY. I'M ON 1 --

2022 1 THE COURT: HOLD ON JUST A SECOND. THERE'S AN
2 OBJECTION.

3 IS THAT BEING OFFERED AS EVIDENCE OF THE TRUTH OR
4 ACCURACY OF WHAT MR. MAY I JUST ASK YOU A QUESTION.

5 THIS SAME TESTIMONY JUST WENT IN WITHOUT
6 OBJECTION. YOU'RE MAKING NOW A HEARSAY OBJECTION BUT THE
7 EVIDENCE --

8 MR. BROWN: THERE IS MORE THAN THAT.

9 THE COURT: THERE IS MORE THAN THAT HERE?

10 MR. BROWN: FRANKLY, I'LL MOVE TO STRIKE THE
11 OTHER EVIDENCE.

12 THE COURT: I'M NOT GOING TO STRIKE SOMETHING
13 THAT'S ALREADY BEEN TESTIFIED TO.

14 MS. MASON: YOUR HONOR, IT GOES TO STATE OF MIND
15 AND VERACITY.

16 THE COURT: HOLD ON. IF THERE'S MORE HERE, I
17 BETTER READ THE WHOLE THING.

18 ARE YOU OFFERING WHAT MRS. WHITTEKER'S HUSBAND
19 TOLD HER AS EVIDENCE OF THE TRUTH OR ACCURACY OF WHAT WAS
20 TOLD HER, OR ARE YOU OFFERING IT AS EVIDENCE THAT SHE WAS
21 TOLD THAT AS BEARING ON HER STATE OF MIND?

22 MS. MASON: THE LATTER, YOUR HONOR.

23 THE COURT: THAT TAKES CARE OF THE HEARSAY
24 OBJECTION.

25 NOW, IS THERE ANY OTHER OBJECTION?

26 MR. BROWN: NO, YOUR HONOR.

27 THE COURT: I'M GOING TO ALLOW THIS TO BE READ.

28 LET ME JUST EXPLAIN TO THE JURY AGAIN. THAT

2023 1 PASSAGE INCLUDES SOME TESTIMONY, APPARENTLY, ABOUT WHAT
2 MRS. PATSY WHITTEKER'S HUSBAND TOLD HER.

3 THAT'S NOT BEING OFFERED AT THIS TIME FOR THE
4 TRUTH OR THE ACCURACY OF WHAT SHE WAS TOLD, BUT MERELY AS
5 EVIDENCE THAT SHE WAS TOLD THAT AS BEARING ON HER STATE OF
6 MIND OR UNDERSTANDING.

7 SO YOU MAY CONSIDER IT ONLY FOR THE PURPOSE FOR
8 WHICH IT'S OFFERED, BUT NOT FOR THE BROADER PURPOSE OF ITS
9 TRUTH OR ACCURACY.

10 NOW, YOU MAY READ.
11 MS. MASON: PAGE 126, MA'AM, LINE 17. LET ME
12 READ THAT.
13 "QUESTION: WELL, DO YOU RECALL HOW OLD YOU WERE
14 WHEN MR. ROY WHITTEKER DIED?
15 "ANSWER: NO. WE WERE MARRIED AND LIVING IN
16 VENTURA, BUT I HAVE NO IDEA WHAT YEAR IT WAS.
17 "QUESTION: SO YOU WERE LIVING ON ENTRADA
18 DRIVE --
19 "ANSWER: YES.
20 "QUESTION: -- WHEN MR. WHITTEKER DIED.
21 "AND DID YOU RECEIVE NEWS THAT MR. WHITTEKER HAD
22 DIED?
23 "ANSWER: OF COURSE. HIS BROTHER DOYLE PHONED
24 HIM.
25 "QUESTION: DID YOUR HUSBAND EVER ATTRIBUTE HIS
26 CONDITION, HIS LUNG CANCER CONDITION, TO SMOKING
27 CIGARETTES?
28 "ANSWER: YES.
2024
1 "QUESTION: AND DID HE RELAY THAT INFORMATION TO
2 YOU?
3 "ANSWER: YES.
4 "QUESTION: AND THAT WAS WHEN YOU WERE LIVING ON
5 ENTRADA DRIVE IN VENTURA, MA'AM?
6 "ANSWER: YES.
7 "QUESTION: AND YOU MOVED TO OJAI, I BELIEVE, IN
8 197- --
9 "ANSWER: '4.
10 "QUESTION: -- '4. OKAY.
11 "ANSWER: IN JUNE OF 1974."
12 Q. DID I READ THAT CORRECTLY, MA'AM?
13 MR. BROWN: YOUR HONOR --
14 THE WITNESS: YES, YOU READ THAT CORRECTLY.
15 THE COURT: LET ME JUST BE SURE. MY LIMITING
16 INSTRUCTION APPLIED NOT ONLY TO WHAT MR. WHITTEKER SAID TO
17 MRS. WHITTEKER, BUT ALSO TO ANYTHING THAT THE BROTHER DOYLE
18 SAID.
19 MR. BROWN: YOUR HONOR, MAY I ASK HER TO READ
20 JUST TWO MORE LINES?
21 THE COURT: ANY OBJECTION TO DOING THAT?
22 MS. MASON: THROUGH LINE 17?
23 MR. BROWN: I'D LIKE YOU TO READ LINE 23 ON PAGE
24 127 OVER THROUGH LINE 1 OF 128.
25 MS. MASON: I HAVE NO PROBLEM READING THAT.
26 LET'S START WITH LINE 15.
27 MR. BROWN: NO. WELL, WHERE ARE YOU?
28 MS. MASON: LET'S JUST READ IT IN CONTEXT.
2025
1 LET'S JUST CONTINUE THE READING.
2 MR. BROWN: OKAY. WHATEVER.
3 MS. MASON: "QUESTION: DID -- I'M SORRY.
4 "ANSWER: WE BOUGHT THE HOUSE IN MARCH, BUT WE
5 DIDN'T MOVE UNTIL JUNE BECAUSE OF SCHOOL.
6 "QUESTION: I SEE. SO THIS ALL OCCURRED BEFORE
7 YOU MOVED TO --
8 "ANSWER: OH, YES.
9 "QUESTION: -- OJAI.
10 "ANSWER: LONG TIME.
11 "QUESTION: DID YOU ATTRIBUTE MR. WHITTEKER'S
12 DEATH TO SMOKING CIGARETTES?
13 "ANSWER: I DIDN'T KNOW ANYTHING ABOUT IT. I
14 JUST KNOW WHAT THEY SAID.

15 "QUESTION: BUT YOUR HUSBAND SAID THAT IT
16 WAS --"
17 MR. BROWN: YOUR HONOR, THAT'S WHAT I ASKED HER
18 TO READ.
19 MS. MASON: I'M SORRY?
20 MR. BROWN: I JUST ASKED HER TO STOP RIGHT
21 THERE, THROUGH LINE 1, YOUR HONOR.
22 MS. MASON: YOUR HONOR, I NEED TO FINISH THE
23 NEXT THREE LINES THEN.
24 THE COURT: ANY OBJECTION?
25 MR. BROWN: IF YOU ARE GOING ON AND ON, LET ME
26 SEE WHAT IT IS.
27 THE COURT: IS THERE ANY OBJECTION? SHE WANTS
28 TO READ TWO MORE LINES.

2026
1 ANY OBJECTION?
2 MR. BROWN: NOW WE ARE TALKING ABOUT HEARSAY ON
3 HEARSAY.
4 THE COURT: WE ARE NOT TALKING ABOUT HEARSAY ON
5 HEARSAY. BUT I'M GIVING THE SAME LIMITING INSTRUCTION THAT
6 I JUST GAVE YOU FOR THE NEXT COUPLE OF LINES.
7 MR. BROWN: ACTUALLY, GO RIGHT AHEAD. I HAVE NO
8 OBJECTION.
9 CAN I SEE HOW FAR SHE OUGHT TO READ IT, YOUR
10 HONOR?
11 DOWN THROUGH 16. DOWN THROUGH LINE 16.
12 MS. MASON: THAT'S FINE, YOUR HONOR.
13 THE COURT: OKAY.
14 MS. MASON: "QUESTION: BUT YOUR HUSBAND SAID
15 THAT IT WAS --
16 "ANSWER: WELL, HE SAID --
17 "QUESTION: -- THAT HE ATTRIBUTED TO THE SMOKING
18 CIGARETTES?
19 "ANSWER: HE SAID THAT HIS BROTHER TOLD HIM
20 THAT.
21 "QUESTION: HIS BROTHER --
22 "ANSWER: HIS BROTHER DOYLE.
23 "QUESTION: HIS BROTHER DOYLE. OKAY.
24 "DO YOU KNOW IF MR. ROY WHITTEKER EVER VISITED
25 YOUR FAMILY WHILE MS. WHITELEY WAS GROWING UP?
26 "ANSWER: NO, HE NEVER DID.
27 "QUESTION: DID YOUR HUSBAND EVER TALK TO YOUR
28 CHILDREN ABOUT MR. WHITTEKER AND -- MR. ROY

2027
1 WHITTEKER AND WHY HE HAD DIED?
2 "ANSWER: NO."
3 Q. DID I READ THAT CORRECTLY, MA'AM?
4 A. YES, YOU DID.
5 Q. OKAY, MA'AM. AND YOU KNEW, AT LEAST BEFORE YOU
6 MOVED TO OJAI IN 1974, THAT MR. ROY WHITTEKER'S DEATH, HIS
7 LUNG CANCER DEATH HAD BEEN ATTRIBUTED TO SMOKING; IS THAT
8 RIGHT?
9 A. YES. I KNEW IT HAD TO DO WITH SMOKING.
10 Q. ALL RIGHT. AND MRS. WHITTEKER, MR. ROY WHITTEKER
11 ISN'T THE ONLY DEATH THAT YOU'RE AWARE OF THAT HAS BEEN
12 ASSOCIATED IN YOUR FAMILY TO SMOKING; IS THAT RIGHT?
13 A. IN MY FAMILY?
14 Q. YES.
15 A. OR IN MY HUSBAND'S FAMILY?
16 Q. LET'S TALK FOR A MINUTE ABOUT YOUR FAMILY.
17 A. NO, I DON'T KNOW THAT ANYONE IN MY FAMILY'S DEATH
18 WAS ATTRIBUTED TO SMOKING.
19 Q. OKAY. LET'S TALK FOR A FEW MINUTES,

20 MRS. WHITTEKER, ABOUT YOUR FATHER.
21 A. YES.
22 Q. MA'AM, YOU'VE HEARD CIGARETTES REFERRED TO AS
23 "COFFIN NAILS"; ISN'T THAT RIGHT?
24 A. I HAVE HEARD THAT.
25 Q. AND YOU HEARD THAT FROM YOUR FATHER, MA'AM,
26 DIDN'T YOU?
27 A. YES. HE WORKED IN THE OIL FIELDS.
28 Q. YOU HEARD YOUR FATHER REFER TO CIGARETTES AS
2028 1 COFFIN NAILS A VERY LONG TIME AGO?
2 A. BUT IT CAN -- COULD HAVE ONLY BEEN A FEW TIMES.
3 THAT WAS YEARS AGO.
4 Q. YOUR FATHER HAS PASSED AWAY, HASN'T HE, MA'AM?
5 A. YES.
6 Q. AND HE DIED IN 1968; IS THAT RIGHT?
7 A. YES.
8 Q. AND YOUR FATHER WAS A SMOKER, WASN'T HE, MRS.
9 WHITTEKER?
10 A. YES.
11 Q. AND YOUR FATHER KNEW YOUR CHILDREN VERY WELL,
12 DIDN'T HE, MA'AM?
13 A. OF COURSE.
14 Q. IN FACT, HE ONLY LIVED ABOUT FOUR MILES FROM YOUR
15 HOUSE IN VENTURA?
16 A. YES. I WOULD SAY FOUR MILES.
17 Q. AND HE WOULD COME AND VISIT YOUR FAMILY QUITE
18 OFTEN; ISN'T THAT RIGHT?
19 A. WE WENT TO SEE HIM.
20 Q. AND YOUR CHILDREN KNEW THAT HE SMOKED; ISN'T THAT
21 RIGHT?
22 A. YES.
23 Q. AND MRS. WHITTEKER, YOUR FATHER HAD EMPHYSEMA,
24 DIDN'T HE?
25 A. THAT'S WHAT THE DOCTOR SAID.
26 Q. AND THE DOCTOR ALSO TOLD HIM THAT HIS EMPHYSEMA
27 WAS CAUSED BY SMOKING?
28 MR. BROWN: OBJECTION. HEARSAY.
2029 1 THE COURT: AGAIN, I'M GOING TO GIVE THE
2 LIMITING INSTRUCTION --
3 MR. BROWN: ALSO, FOUNDATION ON WHAT HIS DOCTOR
4 TOLD HIM.
5 THE COURT: WELL, YES. WHY DON'T YOU REPHRASE
6 THE QUESTION. AND THEN IF THERE IS AN OBJECTION ON HEARSAY,
7 I WILL GIVE A LIMITING INSTRUCTION.
8 I THINK THE QUESTION IS A LITTLE UNCLEAR.
9 MS. MASON: THANK YOU, YOUR HONOR.
10 Q. MRS. WHITTEKER, YOU KNOW, DON'T YOU, THAT YOUR
11 FATHER'S EMPHYSEMA WAS ATTRIBUTED TO SMOKING?
12 MR. BROWN: OBJECTION. SAME OBJECTION. IT JUST
13 WALKS AROUND IT. FOUNDATION.
14 THE COURT: PEOPLE ARE TRYING TO GIVE ME SOME
15 LAW SCHOOL QUESTIONS.
16 THIS IS BEING OFFERED NOT AS EVIDENCE THAT IT
17 ACTUALLY WAS ATTRIBUTED TO SMOKING, BUT AS BEARING ON THE
18 WITNESS' UNDERSTANDING, HER STATE OF MIND, THAT IT WAS
19 ATTRIBUTED TO SMOKING.
20 IS THAT IT?
21 MS. MASON: YES, YOUR HONOR.
22 THE COURT: OKAY. THAT'S NOT HEARSAY.
23 MR. BROWN: THE FORM OF THE QUESTION IS "YOU
24 KNEW THAT IT WAS ATTRIBUTED."

25 THE FOUNDATION -- WE DON'T KNOW IF THE HOLY GHOST
26 TOLD HER. WE NEED TO KNOW HOW SHE KNEW THAT.
27 THE COURT: CAN YOU MAKE THE QUESTION MORE
28 SPECIFIC?
2030
1 MS. MASON: SURE.
2 Q. MRS. WHITTEKER, YOU ACTUALLY SPOKE TO YOUR FATHER
3 ABOUT HIS SMOKING, DIDN'T YOU?
4 A. NO, I DID NOT.
5 Q. YOU DIDN'T HAVE CONVERSATIONS WITH YOUR FATHER
6 ABOUT WHAT HIS EMPHYSEMA WAS ATTRIBUTED TO?
7 A. NO. I TALKED TO MY SISTER.
8 Q. YOU TALKED TO YOUR SISTER ABOUT WHAT YOUR
9 FATHER'S EMPHYSEMA WAS ATTRIBUTED TO; IS THAT RIGHT?
10 A. YES.
11 Q. AND SHE TOLD YOU THAT HIS EMPHYSEMA WAS
12 ATTRIBUTED TO CIGARETTE SMOKING; ISN'T THAT RIGHT?
13 A. NO.
14 MR. BROWN: OBJECTION. HEARSAY.
15 THE COURT: OKAY.
16 MR. BROWN: I'M SORRY. I WALKED OVER HER LINE
17 THERE.
18 I DON'T KNOW WHAT SHE SAID. MAYBE SHE JUST
19 ANSWERED.
20 IF SHE DID, I WILL WITHDRAW THE OBJECTION.
21 THE COURT: DO YOU WANT TO READ BACK WHAT SHE
22 SAID. I THINK SHE WAS INTERRUPTED BY YOUR OBJECTION. SHE
23 STARTED TO ANSWER.
24 WHY DON'T YOU READ BACK WHAT PART OF THE ANSWER
25 HAS BEEN GIVEN, AND THEN WE'LL SEE IF THERE'S AN OBJECTION.
26 (RECORD READ)
27 MR. BROWN: NO OBJECTION.
28 MS. MASON: Q. MRS. WHITTEKER, DO YOU STILL
2031
1 HAVE YOUR DEPOSITION THERE IN FRONT OF YOU?
2 A. YES, I DO.
3 Q. LET ME ASK YOU A SLIGHTLY DIFFERENT QUESTION.
4 YOU CAME TO KNOW THAT YOUR FATHER'S EMPHYSEMA WAS
5 CAUSED BY CIGARETTE SMOKING, DIDN'T YOU?
6 A. PROBABLY IN THE '90S.
7 Q. YOU DIDN'T KNOW IT IN 1968?
8 A. NO.
9 Q. OKAY. MA'AM, WHY DON'T YOU LOOK WITH ME AT PAGE
10 124 OF YOUR DEPOSITION, LINE 24 -- LINES 7 THROUGH 19.
11 A. OKAY.
12 MR. BROWN: 7 THROUGH 19. THAT'S WHAT YOU ARE
13 TALKING ABOUT?
14 MS. MASON: YES.
15 THE COURT: I'D LIKE TO SPEED THIS UP.
16 MR. BROWN, ARE THERE ANY OBJECTIONS?
17 MR. BROWN: THERE'S NO OBJECTION.
18 THE COURT: OKAY. YOU MAY READ.
19 MS. MASON: YOUR HONOR, MAY I ASK ONE QUESTION?
20 THE COURT: THEN YOU CAN READ.
21 THERE'S NO OBJECTION.
22 MS. MASON: THANK YOU.
23 Q. MRS. WHITTEKER, YOUR FATHER'S NAME WAS MR.
24 ROBERSON; IS THAT CORRECT?
25 A. YES. RAY ROBERSON.
26 Q. IF YOU'LL READ WITH ME MA'AM, PAGE 124, LINE 7.
27 A. YES.
28 Q. "QUESTION: DO YOU RECALL HOW SOON BEFORE HE DIED
2032

1 IN 1968 THAT HIS DOCTOR TOLD HIM THAT -- THAT -- I'M SORRY.
2 LET ME FINISH THE QUESTION.

3 "I'M JUST KIND OF -- WENT KIND OF -- HAD
4 A LITTLE DREAM THERE. SORRY. NEED MORE COFFEE.
5 "DO YOU KNOW HOW SOON BEFORE MR. ROBERSON'S
6 DEATH IN 1968 THAT HIS DOCTOR TOLD HIM THAT HIS
7 EMPHYSEMA AND HIS HEART CONDITION WERE RELATED TO
8 HIS CIGARETTE SMOKING?

9 "ANSWER: NO, I COULDN'T TELL YOU THE TIME. I
10 DON'T KNOW. I HAD MY OWN FAMILY TO TAKE CARE OF.

11 "QUESTION: BUT YOU WERE AWARE OF IT, PRIOR TO
12 1968, THAT HIS DOCTOR HAD TOLD HIM THESE THINGS?

13 "ANSWER: PROBABLY DURING 1968 SOMETIME."

14 DID I READ THAT CORRECTLY, MA'AM?

15 A. YES, YOU DID.

16 AND I PROBABLY MISSPOKE, BECAUSE I WAS -- MY
17 SISTER THAT TOLD ME THAT THE DOCTOR HAD TOLD MY MOTHER, WHO
18 HAD TOLD HER, THAT IT MIGHT HAVE BEEN CIGARETTE SMOKING.

19 Q. AND, MA'AM, YOUR FATHER ULTIMATELY DIED OF A
20 HEART ATTACK; ISN'T THAT RIGHT?

21 A. YES, HE DID.

22 Q. AND HE HAD A HEART CONDITION; ISN'T THAT RIGHT?

23 A. NO, HE HAD A SUDDEN HEART ATTACK THAT KILLED HIM.

24 Q. YOUR FATHER DIDN'T HAVE A HEART CONDITION, MA'AM?

25 A. NOT THAT I KNOW OF.

26 Q. ALL RIGHT. YOUR DEPOSITION, MA'AM, PAGE 123 --
27 PAGE 122, LINE 22 THROUGH LINE 13.

28 THE COURT: OF WHAT PAGE?

2033

1 MS. MASON: I'M SORRY, YOUR HONOR.

2 PAGE 123, LINE 13.

3 THE WITNESS: DID YOU SAY 123 OR 122?

4 MS. MASON: Q. BEGINNING ON PAGE 122.

5 A. OKAY.

6 Q. LINE 22, THROUGH 123, LINE -- WE MIGHT AS WELL GO
7 THROUGH LINE 22.

8 MR. BROWN: THERE'S SOME HEARSAY IN THERE, YOUR
9 HONOR. NOT PARTICULARLY ALL OF IT, BUT SOME OF IT.

10 THE COURT: ALL RIGHT. TO THE EXTENT THAT THIS
11 PASSAGE SHOWS THAT MRS. WHITTEKER WAS TOLD VARIOUS THINGS,
12 THIS IS NOT BEING OFFERED FOR THE TRUTH OR THE ACCURACY OF
13 WHAT SHE WAS TOLD, BUT MERELY AS EVIDENCE THAT SHE WAS TOLD
14 IT AND BEARING ON HER STATE OF MIND.

15 SO YOU MAY CONSIDER IT ONLY FOR THAT PURPOSE.

16 MS. MASON: THANK YOU.

17 Q. PAGE 122, LINE 22, DO YOU HAVE IT THERE IN FRONT
18 OF YOU?

19 A. YES.

20 Q. "QUESTION: DO YOU KNOW WHAT YOUR FATHER DIED OF?

21 "ANSWER: YES. HE DIED OF A HEART ATTACK.

22 "QUESTION: DID HE DIE OF -- DID HE HAVE

23 EMPHYSEMA?

24 "ANSWER: BEFORE THAT, HE HAD EMPHYSEMA, BUT IT
25 WASN'T HORRIBLE. I MEAN, HE DIDN'T CARRY THE
26 BACKPACK, YOU KNOW.

27 "QUESTION: WOULD HE EVER ATTRIBUTE THAT TO ANY
28 SPECIFIC CAUSE, HIS EMPHYSEMA?

2034

1 "ANSWER: HIS DOCTOR TOLD HIM TO QUIT SMOKING.

2 "QUESTION: AND THAT WAS BEFORE HE DIED IN 1969?

3 "ANSWER: YES.

4 "QUESTION: DID HE TELL YOU THAT, THAT HIS --

5 "ANSWER: YES.

6 "QUESTION: -- THAT HIS DOCTOR TOLD HIM TO QUIT
7 SMOKING?
8 "ANSWER: YES.
9 "QUESTION: DID HE OR DID YOU BELIEVE AT ANY
10 TIME THAT MAYBE HIS HEART CONDITION WAS ALSO
11 RELATED TO SMOKING?
12 "ANSWER: WELL, THAT'S WHAT THE DOCTOR SAID.
13 "QUESTION: SO THAT HIS -- I'M SORRY. YOUR
14 FATHER'S -- MR. ROBERSON'S DOCTOR --
15 "ANSWER: MY FATHER --
16 "QUESTION: -- TOLD HIM THAT?
17 "ANSWER: YES.
18 "QUESTION: -- HIS HEART CONDITION WAS ALSO
19 RELATED TO SMOKING?
20 "ANSWER: YES, THAT'S WHAT HE TOLD HIM.
21 "QUESTION: AND THAT WAS IN 1969 -- BEFORE
22 1969 -- OH, I'M SORRY. -
23 "ANSWER: EXCUSE ME. I'M SORRY.
24 "QUESTION: THAT'S OKAY. CAN WE CONTINUE?
25 "ANSWER: YEAH.
26 "QUESTION: OKAY. AND THAT WAS BEFORE MR.
27 ROBERSON'S DEATH IN 1969; IS THAT CORRECT, MA'AM?
28 "ANSWER: HE DIED IN 1968."
2035

1 DID I READ THAT CORRECTLY, MRS. WHITTEKER?
2 A. YES, YOU DID.
3 Q. OKAY. MRS. WHITTEKER, LET'S TURN BRIEFLY TO TALK
4 ABOUT SOME OF THE ACTIVITIES LESLIE ENGAGED IN WHILE SHE WAS
5 GROWING UP.
6 AND I BELIEVE YOU HAVE ALREADY TOLD US,
7 MRS. WHITTEKER, THAT LESLIE GRADUATED FROM HIGH SCHOOL AT
8 THE AGE OF 16; IS THAT RIGHT?
9 A. YES, SHE DID.
10 Q. AND MA'AM, YOU DIDN'T KNOW THAT LESLIE WAS
11 SMOKING MARIJUANA IN HIGH SCHOOL, DID YOU?
12 A. NO, I DID NOT.
13 Q. AND YOU DIDN'T KNOW THAT SHE WAS DRINKING ALCOHOL
14 WHILE SHE WAS IN HIGH SCHOOL, DID YOU?
15 A. NO, I DID NOT.
16 Q. AND IN FACT, MA'AM, YOU DIDN'T KNOW SHE BEGAN TO
17 SMOKE AT THE AGE OF 13; ISN'T THAT RIGHT?
18 A. THAT'S RIGHT.
19 Q. AND DID I UNDERSTAND YOU CORRECTLY,
20 MRS. WHITTEKER, THAT YOU DIDN'T KNOW THAT LESLIE WAS
21 SUSPENDED FROM HIGH SCHOOL FOR SMOKING; IS THAT RIGHT?
22 A. YOU'RE CORRECT. I WOULD HAVE BEEN QUITE UPSET.
23 Q. YOU JUST DIDN'T KNOW IT AT THE TIME IT HAPPENED?
24 A. I DIDN'T KNOW IT.
25 Q. YOU'VE NEVER HEARD OR SEEN ANYTHING ENTITLED "THE
26 FRANK STATEMENT TO CIGARETTE SMOKERS"; IS THAT RIGHT?
27 A. I'M NOT SURE I UNDERSTAND WHAT YOU MEAN BY THE
28 "FRANK STATEMENT."
2036

1 Q. "THE FRANK STATEMENT TO CIGARETTE SMOKERS" THAT
2 WAS PUBLISHED IN THE 1950S, YOU'VE NEVER SEEN, HAVE YOU?
3 A. IN THE '50S?
4 Q. CORRECT.
5 A. NO, I NEVER SAW THAT.
6 Q. AND THAT WASN'T ANYTHING YOU EVER DISCUSSED IN
7 YOUR HOUSEHOLD, WAS IT, MA'AM?
8 A. NO, IT WASN'T.
9 MS. MASON: THANK YOU, MA'AM. THAT'S ALL I
10 HAVE.

16 WAS WHEN HE DIED?

17 A. I HAVE NO IDEA. I ONLY MET HIM TWICE.

18 Q. OKAY. WITH RESPECT TO WHATEVER LESLIE DID IN THE
19 CLOTHES, DO YOU REMEMBER WHICH YEAR SHE STARTED THE FIRST
20 GRADE?

21 A. WELL, COUNTING BACK --

22 Q. 11 WOULD BE '75. 11 FROM '75 -- '65, I MEAN.

23 A. YES. IT COULDN'T BE '75.

24 Q. THAT WOULD BE HARD.

25 A. YES.

26 Q. OKAY. LET ME JUST ASK YOU ONE OTHER QUESTION
27 THAT RELATES TO THE QUESTIONS THAT WERE ASKED YOU ABOUT WHAT
28 YOU KNEW.

2039

1 DID YOU EVER SEE BILLBOARDS IN THE VENTURA AREA
2 UP UNTIL SOMETIME IN THE '90S THAT SAID ANYTHING ABOUT
3 SMOKING AND HEALTH?

4 MR. ESCHER: OBJECTION, YOUR HONOR.

5 THE WITNESS: I --

6 THE COURT: JUST A SECOND.

7 MR. ESCHER: EXCUSE ME.

8 THE COURT: LEGAL GROUNDS?

9 MR. ESCHER: LABELING ACT PREEMPTION, YOUR
10 HONOR.

11 THE COURT: SUSTAINED. IT'S OVERBROAD. THE
12 QUESTION IS OVERBROAD IN TIME.

13 THE WITNESS: COULD YOU REPEAT THAT.

14 MR. BROWN: I'D LIKE TO HAVE A CONFERENCE ON
15 THAT, YOUR HONOR. I DON'T THINK THE QUESTION IS UNDERSTOOD
16 BY MR. ESCHER.

17 THE COURT: OKAY.

18 (COURT AND COUNSEL CONFER OUTSIDE

19 THE PRESENCE OF THE JURY)

20 MR. BROWN: Q. LET ME QUALIFY THE QUESTION.
21 OTHER THAN CIGARETTE COMPANY ADVERTISEMENTS THAT
22 YOU MAY OR MAY NOT HAVE SEEN, IN ALL THE TIME THAT YOU LIVED
23 IN VENTURA, DID YOU EVER SEE A BILLBOARD WHICH CONTAINED
24 SOME KIND OF A HEALTH MESSAGE ABOUT SMOKING CIGARETTES?

25 A. NO, I NEVER SAW A MESSAGE. THEY ALWAYS SHOWED
26 HEALTHY PEOPLE.

27 Q. ALL RIGHT.

28 MR. ESCHER: OBJECTION, YOUR HONOR.

2040

1 THE COURT: THAT WASN'T RESPONSIVE TO THE
2 QUESTION.

3 I'M GOING TO STRIKE THE PORTION ABOUT "THEY
4 ALWAYS SHOWED HEALTHY PEOPLE." YOU MUST DISREGARD THAT.

5 MR. BROWN: Q. I WASN'T ASKING FOR
6 ADVERTISEMENTS; YOU UNDERSTAND THAT?

7 THE COURT: THAT WASN'T THE QUESTION THAT WAS
8 ASKED, AND THAT ANSWER EXCEEDED THE SCOPE OF THE QUESTION.

9 AND SO I'M STRIKING IT.

10 THE WITNESS: SORRY.

11 THE COURT: I WILL LEAVE IN THE BALANCE OF THE
12 ANSWER UP UNTIL WHERE THERE WAS THAT REFERENCE.

13 MR. BROWN: OKAY.

14 Q. NOW, CAN YOU RECALL EVER HAVING A DISCUSSION WITH
15 ANY PERSON ABOUT THE EFFECTS OF CIGARETTE SMOKING, IN A
16 GENERAL WAY NOW?

17 I'M NOT TALKING ABOUT THOSE CONVERSATIONS WE JUST
18 REFERRED TO ON DIRECT.

19 BUT PUTTING THOSE ASIDE, DO YOU RECALL EVER
20 HEARING OR BEING INVOLVED IN ANY CONVERSATION UP UNTIL THE

21 '90S IN WHICH THE GENERAL SUBJECT WAS WHAT CIGARETTES COULD
22 DO TO YOU IF YOU SMOKED THEM?

23 A. NO.

24 Q. ANY DISCUSSION AT ALL?

25 A. NO, I DON'T RECALL ANY DISCUSSION LIKE THAT.

26 Q. AND THAT'S WITH YOUR FAMILY, WITH YOUR FRIENDS,
27 WITH PEOPLE YOU BARELY KNEW. NO DISCUSSION AT ALL?

28 A. NO.

2041

1 MR. BROWN: ALL RIGHT. THANK YOU.

2 THE COURT: ANYTHING FURTHER BY ANYBODY FOR

3 MRS. WHITTEKER?

4 MS. MASON: NO, YOUR HONOR.

5 MR. ROSSE: NO, YOUR HONOR.

6 THE COURT: YOU MAY STEP DOWN.

7 (WITNESS EXCUSED)

8 THE COURT: LET ME JUST TELL THE JURORS, I'M
9 GOING TO GIVE YOU -- WHEN WE TAKE THE RECESS THIS MORNING,
10 I'M GOING TO KEEP IT A LITTLE BIT SHORTER, LIKE MAYBE 15
11 MINUTES.

12 AFTER THE NOON HOUR, I WANT TO SPEND A FEW MORE
13 MINUTES WITH THE LAWYERS, SEEING IF WE CAN CONTINUE TO
14 EXPEDITE THE PROCESS BY WORKING ON SOME OF THE DOCUMENTS
15 TOGETHER.

16 SO I'M GOING TO ACTUALLY GIVE YOU AN EXTRA HALF
17 HOUR FOR LUNCH TODAY, WITH THE ANTICIPATION THAT THAT WILL
18 EXPEDITE MATTERS.

19 SO I'M GOING TO GIVE YOU FROM 12:00 TO 2:00 FOR
20 LUNCH. IF YOU WANT TO PLAN TO DO ANYTHING AT LUNCH, YOU'LL
21 HAVE AN EXTRA HALF HOUR.

22 WHO IS THE NEXT WITNESS?

23 MS. CHABER: THE PLAINTIFF WOULD CALL TO THE
24 STAND DR. RICHARD POLLAY.

25 I WILL GO FIND HIM.

26 THE COURT: OKAY.

27 THE CLERK: PLEASE COME FORWARD. PLEASE STAND
28 RIGHT HERE AND RAISE YOUR RIGHT HAND.

2042

1 TESTIMONY OF

2 RICHARD W. POLLAY, PH.D.,

3 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
4 DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: PLEASE STATE YOUR NAME.

6 THE WITNESS: RICHARD W. POLLAY, P-O-L-L-A-Y.

7 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

9 DIRECT EXAMINATION

10 BY MR. CHABER: Q. GOOD MORNING, DR. POLLAY.

11 A. GOOD MORNING.

12 Q. ARE YOU A MEDICAL DOCTOR?

13 A. I AM NOT. I'M A DOCTOR IN AN ACADEMIC SENSE.
14 I'M A PROFESSOR OF BUSINESS.

15 Q. AND WHERE DO YOU HAVE YOUR PROFESSORSHIP?

16 A. AT THE UNIVERSITY OF BRITISH COLUMBIA, FACULTY OF
17 COMMERCE, WHICH IS OUR WAY OF SAYING THE SCHOOL OF BUSINESS.

18 Q. AND CAN YOU TELL US -- WE'LL COME BACK TO YOUR
19 TELLING US WHAT THAT WORK ENTAILS.

20 Q. WERE YOU BORN HERE IN THE UNITED STATES?

21 A. I WAS. I WAS BORN AND RAISED IN CONNECTICUT.

22 Q. AND YOU ATTENDED ALL YOUR SCHOOLING HERE IN THE
23 UNITED STATES?

24 A. I DID. I DID AN UNDERGRADUATE DEGREE AT AN
25 ENGINEERING SCHOOL IN NEW YORK STATE.

26 AND THEN I DID BOTH A MASTER'S DEGREE AND A PH.D.
27 DEGREE AT THE UNIVERSITY OF CHICAGO.

28 Q. AND YOU ARE U.S. RESIDENT?

2043 1 A. RESIDENT?

2 Q. NO. EXCUSE ME. ARE YOU A U.S. CITIZEN?

3 A. I'M A U.S. CITIZEN AND A RESIDENT OF CANADA.

4 Q. BEING A U.S. CITIZEN, EVEN THOUGH YOU LIVE
5 SOMEWHERE ELSE, MEANS YOU KEEP PAYING YOUR TAXES AND THAT
6 KIND OF THING?

7 A. IT MEANS I HAVE TO FILE TAXES BOTH HERE AND
8 THERE.

9 Q. OKAY. HOW LONG HAVE YOU BEEN AT THE UNIVERSITY
10 OF BRITISH COLUMBIA?

11 A. I'VE BEEN THERE SINCE 1970. I'VE HAD SABBATICALS
12 FROM TIME TO TIME. I HAVE HAD A YEAR OFF IN ORDER TO DO
13 OTHER THINGS.

14 BUT IT'S ALMOST 30 YEARS NOW SINCE I STARTED AT
15 THE UNIVERSITY OF BRITISH COLUMBIA.

16 Q. TELL US A LITTLE BIT ABOUT YOUR SCHOOLING, THE
17 DEGREES THAT YOU GOT, THE AREAS OF STUDY.

18 A. MY UNDERGRADUATE EDUCATION WAS IN A FIELD CALLED
19 MANAGEMENT ENGINEERING, WHICH IS A MIXTURE OF GENERAL
20 ENGINEERING PROGRAMS WITH BUSINESS STUDIES, IN ORDER TO
21 TRAIN PEOPLE TO BECOME EXECUTIVES IN TECHNICAL INDUSTRIES.
22 THIS WAS IN THE LATE 1950S, EARLY 1960S.

23 AND THEN, BECAUSE I ENJOYED THAT BUSINESS ASPECT,
24 I WENT ON TO DO GRADUATE WORK AT THE UNIVERSITY OF CHICAGO,
25 WHERE I STUDIED MARKETING AND WORKED FOR AWHILE FOR GENERAL
26 ELECTRIC.

27 AND AFTER THAT, I WENT BACK TO SCHOOL AND IN MY
28 PH.D. WORK DID STUDIES IN CONSUMER BEHAVIOR, THE

2044 1 APPLICATIONS OF, PRIMARILY, PSYCHOLOGY, BUT SOME OTHER
2 SOCIAL SCIENCES, LIKE ANTHROPOLOGY AND SOCIOLOGY, TO THE
3 UNDERSTANDING OF WHAT MAKES CONSUMERS BEHAVE THE WAY THEY DO
4 AND HOW THE BUSINESS BEHAVIOR LIKE ADVERTISING INFLUENCES
5 CONSUMERS.

6 Q. DID IT HAVE A TITLE, THE PROGRAM THAT YOU WERE
7 IN?

8 A. IT WAS A BEHAVIORAL SCIENCES FOR BUSINESS PH.D.
9 PROGRAM IN THE BUSINESS SCHOOL AT THE UNIVERSITY OF CHICAGO.

10 Q. AND DID IT INCLUDE ISSUES OF THE ETHICS OF
11 BUSINESSES WITH RESPECT TO CONSUMERS?

12 A. IT DOES. AS DOES, OF COURSE, THE TEACHING I HAVE
13 BEEN ENGAGED IN EVER SINCE THEN. ITS ETHICAL ASPECTS ARE
14 CONSTANT IN ALL BUSINESS STUDIES.

15 I MEAN, ALMOST ALL BUSINESS DECISIONS INVOLVE
16 ETHICAL CONSIDERATIONS.

17 Q. YOU ARE NOT A PSYCHOLOGIST; IS THAT CORRECT?

18 A. WELL, I WAS A MEMBER OF THE AMERICAN
19 PSYCHOLOGICAL ASSOCIATION FOR A WHILE. I TRAINED AS
20 PSYCHOLOGIST, BUT I'M NOT A PSYCHOLOGIST IN THE SENSE OF A
21 CLINICAL PSYCHOLOGIST TREATING PATIENTS ONE ON ONE.

22 Q. TO UNDERSTAND THE TYPE OF ISSUES THAT YOU LOOK
23 AT, THOUGH, YOU DO NEED TO BE FAMILIAR WITH AND UNDERSTAND
24 PSYCHOLOGICAL PRINCIPLES?

25 A. THAT'S CORRECT.

26 Q. AND WE'LL COME BACK TO YOUR TEACHING IN A FEW
27 MINUTES, BUT I JUST WANT TO UNDERSTAND.

28 IN ADDITION TO GETTING YOUR PH.D. AND THE OTHER

2045 1 DEGREES THAT YOU'VE DESCRIBED, DID YOU DO ANY CONTINUING

2 EDUCATION WORK AT OTHER INSTITUTIONS?

3 A. I DID. MY FIRST SABBATICAL IN 1976 I HAD THE
4 OPPORTUNITY TO SPEND AT HARVARD, WHERE I DID POSTDOCTORAL
5 STUDIES, MEANING A YEAR'S WORTH OF STUDIES AFTER COMPLETING
6 THE DOCTORATE DEGREE.

7 Q. AND WHAT WAS THAT?

8 A. AND I DID THAT IN BUSINESS HISTORY.

9 Q. CAN YOU TELL US WHAT YOU MEAN BY "BUSINESS
10 HISTORY."

11 A. I WAS INTERESTED IN THE HISTORY OF ADVERTISING.
12 AND IT TURNS OUT HARVARD HAS THE WORLD'S FOREMOST PROGRAM IN
13 THE HISTORY OF BUSINESS PRACTICES AND A PHENOMENALLY GOOD
14 LIBRARY.

15 SO I WENT THERE, SPENT A YEAR STUDYING UNDER SOME
16 OF THE SENIOR MEMBERS OF THE FACULTY, USING THE LIBRARY
17 MATERIALS AND WORKING ON A BOOK OF MY OWN.

18 Q. AND IN THE COURSE OF THAT, DID YOU HAVE TO LEARN
19 HOW TO DO HISTORICAL RESEARCH RELATING TO BUSINESSES?

20 A. YES.

21 MR. ESCHER: OBJECTION. EXCUSE ME, YOUR HONOR.
22 VAGUE AS TO THE TERMS BEING USED HERE.

23 THE COURT: WELL, YOU CAN ASK HIM WHAT HE'S
24 REFERRING TO AND THAT WILL CLARIFY IT.

25 WHY DON'T YOU ASK HIM WHAT HE'S REFERRING TO WITH
26 THE "YES" ANSWER.

27 MS. CHABER: Q. WHAT WERE YOU REFERRING TO
28 WHEN YOU SAID "YES" TO "HISTORICAL RESEARCH"?

2046 1 A. WELL, IN THE COURSE OF STUDIES THERE, ONE READ
2 THE LEADING AND BEST KINDS OF RESEARCH BEING DONE IN THE
3 FIELD. SO ONE -- BY EXAMPLE, ONE IS EXPOSED TO THE BEST
4 RESEARCH METHODS AND THE BEST PRACTITIONERS OF BUSINESS
5 HISTORY RESEARCH.

6 IN ADDITION, I DID MY OWN RESEARCH IN THE
7 LIBRARY, WITH SOME SUPERVISION FROM THE FACULTY THERE.

8 Q. HOW WOULD YOU DESCRIBE BUSINESS HISTORY RESEARCH?

9 A. PRIMARILY, IT'S THE ANALYSIS AND INTERPRETATION
10 OF HISTORICAL DOCUMENTS. THAT IS, THE KIND OF DOCUMENTS
11 GENERATED WITHIN A BUSINESS IN THEIR ROUTINE CONDUCT OF
12 ACTIVITIES.

13 AND MANY OF THOSE BECOME ARCHIVED OR SAVED IN
14 SOME WAY. SO THAT, YEARS LATER, WHEN ONE GETS ACCESS TO
15 THESE DOCUMENTS, YOU CAN PUT TOGETHER A PICTURE OF WHAT WAS
16 GOING ON, WHY PEOPLE WERE DOING WHAT THEY WERE DOING, WHAT
17 THE RATIONALIZATIONS WERE FOR VARIOUS DECISIONS PEOPLE MADE,
18 WHAT THE CONSEQUENCES OF THOSE DECISIONS WERE, AND
19 RECONSTRUCT THE THINKING OF THE TIME.

20 Q. AND IS THIS AN ACCEPTED PRACTICE -- I MEAN,
21 YOU'RE NOT THE ONLY PERSON WHO DOES THIS TYPE OF BUSINESS
22 HISTORICAL RESEARCH, ARE YOU?

23 A. THAT'S CORRECT. I'M NOT THE ONLY PERSON THAT
24 DOES BUSINESS HISTORY RESEARCH. I'M ONE OF FEW THAT DOES
25 WORK ON THE HISTORY OF ADVERTISING.

26 Q. IN THE COURSE OF YOUR WORK ON THE HISTORY OF
27 ADVERTISING, YOU'VE PUBLISHED?

28 A. YES, EXTENSIVELY.

2047 1 Q. AND YOU'VE I THINK YOU SAID YOU WROTE A BOOK.

2 IS THERE MORE THAN ONE?

3 A. THE FIRST MAJOR WORK I DID WAS A REFERENCE BOOK
4 CALLED "INFORMATION SOURCES FOR ADVERTISING HISTORY."

5 Q. OKAY. YOU HAVE WORKED ON SURGEON GENERAL
6 REPORTS?

7 A. I HAVE, ON THREE SEPARATE OCCASIONS.
8 Q. CAN YOU TELL US A LITTLE BIT ABOUT THAT.
9 A. YES. AT THE REQUEST OF THE PEOPLE WHO PULL
10 TOGETHER THE TEAMS WHO WRITE THE SURGEON GENERAL'S REPORTS,
11 I HAD -- I WAS REQUIRED OR REQUESTED TO WRITE THE HISTORIES
12 OF ADVERTISING WITH RESPECT TO THE TARGETING OF YOUTH, WOMEN
13 AND ETHNIC MINORITIES.
14 Q. WERE THOSE SEPARATE REPORTS?
15 A. YES.
16 Q. CAN YOU TELL US THE YEARS?
17 A. THE SURGEON GENERAL'S REPORT ON YOUTH WAS
18 PUBLISHED IN 1994. THE ONE ON ETHNIC MINORITIES WAS
19 PUBLISHED IN 1998. AND THE ONE ON WOMEN IS FORTHCOMING,
20 PROBABLY THIS YEAR.
21 Q. PROBABLY IN 2000?
22 A. YES.
23 Q. AND THE TOPICS THAT YOU WORKED ON FOR THE 1994
24 YOUTH SURGEON GENERAL'S REPORT WERE WHAT?
25 A. VARIOUS ASPECTS OF THE INDUSTRY'S HISTORICAL
26 RECORD WITH RESPECT TO THEIR APPARENT INTEREST IN THE YOUTH
27 MARKET, THE NATURE OF THE MEDIA THAT THEY EMPLOY, THE NATURE
28 OF THE ADVERTISING MESSAGES THAT THEY EMPLOY, THE
2048
1 CONSEQUENCES OF SMOKING RATES AMONG YOUTH, THE EFFORTS TO
2 REGULATE THAT THROUGH VARIOUS MEANS, BOTH GOVERNMENTAL AND
3 SELF-REGULATORY MEANS AND THE DIFFICULTIES OF THOSE
4 PROCEDURES.
5 AND IN GENERAL, A CHRONOLOGY OF THE HISTORICAL
6 RECORD FROM ABOUT THE 1920S UP UNTIL THE 1990S WITH RESPECT
7 TO THE IMPORTANCE OF THE YOUTH MARKET, INCLUDING ACCESS TO
8 CORPORATE DOCUMENTS.
9 Q. AND WAS THIS LIKE A WHOLE SECTION OF THE SURGEON
10 GENERAL'S REPORT FOR 1994 AND YOUTH?
11 A. IT WAS. IT WAS THE BULK OF A CHAPTER DEDICATED
12 TO ADVERTISING AND PROMOTION.
13 Q. AND WAS THAT A PEER-REVIEWED PORTION?
14 A. YES, IT WAS.
15 Q. CAN YOU DESCRIBE WHAT THAT ENTAILS.
16 A. IT MEANS THAT AFTER AN INDIVIDUAL LIKE MYSELF AND
17 THE MANY OTHERS WHO CONTRIBUTE TO THE SURGEON GENERAL'S
18 REPORT HAVE WRITTEN THE DRAFT MATERIALS OF WHAT WE'RE
19 CONTRIBUTING, THAT THOSE DRAFTS ARE CIRCULATED TO OTHER
20 PEOPLE WHO ARE ALSO ACTIVE SCHOLARS IN THE FIELD FOR THEIR
21 COMMENTS AND CRITICISMS AND SUGGESTED REVISIONS, AND MAYBE
22 ADDITIONAL INFORMATION THAT THEY MIGHT HAVE.
23 SO THAT THERE'S A PROCESS OF PEER REVIEW, "PEERS"
24 MEANING THE EQUALS TO THE AUTHORS; THAT IS, THE PEOPLE WHO
25 ALSO HAVE SIMILAR EXPERTISE.
26 Q. AND THEN, THERE'S AN OVERALL REVIEW PROCESS?
27 A. AND THEN, WHEN THE FINAL THING IS GATHERED, THEN
28 THERE'S AN EDITORIAL TEAM -- A SENIOR SCIENTIFIC EDITOR AND
2049
1 EDITORIAL TEAM THAT VETS THE FINAL PRODUCT.
2 Q. AND "VET" MEANS?
3 A. JUST TO CLEAR IT, TO LOOK AT IT, TO CHECK IT, TO
4 MAKE SURE IT'S INTERNALLY CONSISTENT, THERE'S NO MAJOR
5 OMISSIONS, THAT THE MATERIALS THEY WANTED TO COVER WERE
6 COVERED, AND SO ON.
7 Q. AND WHAT ROLE DID YOU PLAY IN THE 1998 SURGEON
8 GENERAL'S REPORT ON MINORITIES?
9 A. IT'S A SIMILAR ROLE, IN THE SENSE THAT IT WAS
10 LOOKING AT THE HISTORICAL RECORD OF USING BOTH CORPORATE
11 DOCUMENTS AND TRADE SOURCES; THAT IS, WHAT WAS AVAILABLE TO

12 BE LEARNED FROM THINGS LIKE THE ADVERTISING MAGAZINES OF THE
13 DAY WITH RESPECT TO THE TARGETING OF MINORITIES. AND MOST
14 OF THE INFORMATION THERE WAS WITH RESPECT TO ADVERTISING.

15 MR. BARRON: YOUR HONOR, I HATE TO INTERRUPT.

16 COULD WE HAVE PERHAPS A LITTLE MORE DIRECT
17 RESPONSE TO A LIMITED QUESTION, SO THAT WE CAN ANTICIPATE
18 WHERE THE INQUIRY IS GOING?

19 THE COURT: I THINK THAT'S A GOOD IDEA.

20 WHY DON'T YOU JUST FOCUS YOUR ANSWER ON THE
21 SPECIFIC QUESTION THAT'S GIVEN. BECAUSE IF YOU GET TOO
22 EXPANSIVE, THEN THE LAWYERS ARE SAYING THEY DON'T KNOW WHAT
23 ISSUE YOU'RE ADDRESSING. THEY NEED TO KNOW. YOU NEED TO
24 FOCUS ON THE QUESTION.

25 MS. CHABER WILL ASK YOU THE NEXT QUESTION. IF
26 YOU COULD JUST MAKE YOUR ANSWERS JUST A LITTLE MORE
27 FOCUSED. OKAY.

28 MS. CHABER: Q. WITH RESPECT TO --

2050 1 THE COURT: WHEN I SAY "FOCUSED," I MEAN FOCUSED
2 ON THE PARTICULAR QUESTION. OKAY.

3 MS. CHABER: Q. WITH RESPECT TO THE REPORT
4 THAT'S TO BE PUBLISHED IN 2000 WITH RESPECT TO THE HEALTH
5 CONSEQUENCES OF SMOKING AND WOMEN, WHAT WAS YOUR ROLE IN
6 THAT REPORT?

7 A. MY ROLE WAS TO REVIEW THE HISTORICAL RECORD WITH
8 RESPECT TO THE ADVERTISING PRACTICES AND EFFECTS THEREOF
9 TOWARD WOMEN.

10 Q. AND AGAIN, WERE EACH OF THESE, THE 1998 REPORT ON
11 MINORITIES AND THE REPORT THAT YOU WORKED ON ON WOMEN, WERE
12 THEY PEER-REVIEWED IN A SIMILAR FASHION TO WHAT YOU
13 DESCRIBED FOR 1994?

14 A. YES, THEY WERE.

15 Q. AND THE 2000 REPORT AND THE PORTION THAT YOU'VE
16 DONE IS COMPLETED; IS THAT CORRECT?

17 A. YES, IT IS.

18 Q. AWAITING PUBLICATION?

19 A. THAT'S CORRECT.

20 Q. NOW, YOU ARE TEACHING AND HAVE BEEN FOR HOW MANY
21 YEARS?

22 A. I'VE BEEN TEACHING FOR 34 YEARS.

23 Q. LET'S TALK ABOUT YOUR EARLY TEACHING CAREER.

24 WHERE DID YOU DO THAT?

25 A. I TAUGHT FIRST AT THE UNIVERSITY OF KANSAS IN
26 LAWRENCE, KANSAS FOR FOUR YEARS.

27 Q. AND WHAT WERE YOU TEACHING THERE?

28 A. I WAS TEACHING BUSINESS SCHOOL, TEACHING

2051 1 MARKETING TOPICS, MARKETING RESEARCH, CONSUMER BEHAVIOR,
2 BASIC MARKETING PRINCIPLES.

3 Q. CAN YOU JUST GIVE US AN IDEA WHAT YOU MEAN WHEN
4 YOU SAY "MARKETING" OR "MARKETING PRINCIPLES."

5 A. THE DOMAIN OF MARKETING AND THE BUSINESS LANGUAGE
6 IS ALL OF THOSE ACTIVITIES WHICH INVOLVE WHAT CONSTITUTES
7 THE OFFER TO THE CONSUMERS. SO IT'S THE NATURE OF THE
8 PRODUCT, HOW IT'S PACKAGED, HOW IT'S PRICED, HOW IT'S
9 DISTRIBUTED, HOW IT'S PROMOTED, OF COURSE, AND ADVERTISED.

10 AND THEN, ALONG WITH THAT, THE SUPPORTING
11 ACTIVITIES, LIKE MARKETING RESEARCH, ADVERTISING RESEARCH,
12 IN ORDER THAT THE FIRMS CAN FINE-TUNE THAT EFFORT TO
13 MAXIMIZE ITS EFFICIENCY FOR THEM.

14 Q. AND IN THE COURSE OF YOUR TEACHING WORK, DID YOU
15 TEACH OTHERS? WERE YOU TEACHING ON THE UNDERGRADUATE LEVEL?

16 A. BOTH -- WELL, ALL THREE LEVELS. UNDERGRADUATE,

17 AND THEN THERE'S THE MASTER'S LEVEL, WHICH TENDS TO BE
18 PROFESSIONAL EDUCATION, PEOPLE BEING TRAINED TO BE
19 EXECUTIVES.

20 THEN THERE'S ALSO THE PH.D. LEVEL OF GRADUATE
21 SCHOOL, WHICH ARE PEOPLE WHO ARE BEING TRAINED TO BECOME
22 PROFESSORS.

23 Q. ON ALL OF THOSE LEVELS, WERE ETHICS OF BUSINESS
24 PART OF YOUR TEACHING?

25 A. YES.

26 Q. AND TELL ME AGAIN THE YEARS THAT YOU WERE AT THE
27 UNIVERSITY OF KANSAS.

28 A. I WAS AT THE UNIVERSITY OF KANSAS FROM 1966 TO

2052 1970.

2 Q. AND LET'S JUST TALK ABOUT THAT TIME PERIOD FOR A
3 MINUTE.

4 DID YOU SMOKE?

5 A. I DID.

6 Q. AND WERE YOU ONE OF THE ONLY PROFESSORS SMOKING?

7 A. NO.

8 Q. CAN YOU GIVE US AN IDEA OF HOW YOU COMPARED TO AT
9 LEAST THE POPULATION THAT YOU KNEW AT THE UNIVERSITY WITH
10 RESPECT TO SMOKING?

11 MR. BARRON: YOUR HONOR, EXCUSE ME. I OBJECT.
12 I DON'T UNDERSTAND HOW THIS CONNECTS TO ANYTHING RELEVANT.

13 THE COURT: WHETHER YOU UNDERSTAND SOMETHING OR
14 NOT IS NOT RELEVANT.

15 BUT IF YOU HAVE LEGAL GROUNDS FOR THE OBJECTION,
16 TELL ME WHAT IT IS AND I WILL RULE ON IT.

17 MR. BARRON: AT THIS POINT, IT'S RELEVANCY, YOUR
18 HONOR.

19 THE COURT: SUSTAINED.

20 MR. BARRON: THANK YOU.

21 MS. CHABER: WE'LL COME BACK TO THESE ANOTHER
22 TIME.

23 THE COURT: YOU DON'T WANT TO COME BACK TO
24 THAT. I WILL SUSTAIN.

25 MS. CHABER: WE'LL COME BACK TO THAT AT ANOTHER
26 TIME WHEN I THINK IT MAY BE RELEVANT.

27 THE COURT: WELL, ONCE I SUSTAIN AN OBJECTION TO
28 SOMETHING, YOU ARE NOT GOING TO ASK THE SAME QUESTION AGAIN.

2053

1 I HOPE WE'LL GO AHEAD AND SEE WHAT HAPPENS.
2 YOU GO AHEAD.

3 MS. CHABER: I SAID, WHEN I BELIEVE IT WILL BE
4 RELEVANT, AND I WILL FRAME IT IN SUCH A FASHION, YOUR HONOR.

5 BUT I'M MOVING ON IS THE PART THAT I THOUGHT YOU
6 WOULD BE INTERESTED IN.

7 THE COURT: OKAY. I WAS JUST A LITTLE
8 TITILLATED BY YOUR STATEMENT THAT WE WERE MOVING ON BUT YOU
9 WERE COMING BACK, BECAUSE WHEN I SUSTAIN AN OBJECTION, WE
10 ARE NOT COMING BACK.

11 BUT YOU GO AHEAD. WE'LL SEE WHAT HAPPENS. MAYBE
12 YOU CAN FIND A WAY TO GET BACK.

13 MS. CHABER: THAT WAS MY POINT, YOUR HONOR.

14 THE COURT: YOU GO AHEAD.

15 MS. CHABER: OKAY.

16 THAT TOOK LONGER THAN WHAT MY NEXT QUESTION WAS.

17 THE COURT: I'M SURE.

18 MS. CHABER: Q. DURING THE COURSE OF THE TIME
19 THAT YOU WERE TEACHING AT THE UNIVERSITY OF KANSAS, WERE
20 THERE ANY SPECIFIC TYPES OF BUSINESSES THAT YOU LOOKED AT
21 WITH RESPECT TO YOUR WORK?

22 A. MOST OF THE STUDIES IN THOSE DAYS WERE STUDIES OF
23 CONSUMER PACKAGE GOODS. THAT IS, THE TEXTBOOKS USED
24 EXAMPLES THAT WE WOULD BE FAMILIAR WITH FROM SUPERMARKETS.
25 THAT'S THE KIND OF PRODUCTS THAT WE TYPICALLY SEE ADVERTISED
26 ON TELEVISION AND FIND IN OUR SUPERMARKET, SHOPPING BASKETS,
27 THE NATIONALLY DISTRIBUTED PACKAGED GOODS.

28 IN ADDITION TO THAT, I ALSO DID SOME WORK ON THE

2054 1 APPLICATIONS OF MARKETING IN PUBLIC AND NONPROFIT
2 INSTITUTIONS.

3 Q. OKAY. BUT WHEN YOU'RE TALKING ABOUT PACKAGED
4 GOODS, THESE WOULD BE FOOD PRODUCTS?

5 A. FOOD PRODUCTS.

6 Q. WHAT ELSE?

7 A. PHARMACEUTICAL PRODUCTS, COSMETIC AND OTHER KINDS
8 OF PERSONAL EFFECTS, PRODUCTS LIKE A TOOTHBRUSH, FOR
9 EXAMPLE. ALMOST ANYTHING THAT WOULD BE IN A SUPERMARKET.

10 Q. IN THE COURSE OF YOUR TEACHING THERE, DID YOU DO
11 TEACHING WITH RESPECT TO DOING HISTORICAL RESEARCH ON
12 PRACTICES OF BUSINESSES IN RELATION TO MARKETING?

13 A. I HADN'T REALLY BEGUN ANYTHING THAT WAS
14 PUBLISHED. I HAD BEGUN MY OWN INTEREST IN HISTORICAL
15 ASPECTS AND HAD BEGUN TO DO SOME COLLECTING OF HISTORICAL
16 MATERIALS AND USING THEM FOR ILLUSTRATIONS IN TEACHING, BUT
17 HAD NOT YET BEGUN TO PUBLISH.

18 THAT BEGAN LATER, IN THE MID-1970S, WITH THE
19 HARVARD EXPERIENCE.

20 Q. OKAY. AND YOU DID PUBLISH AFTER YOUR HARVARD
21 EXPERIENCE?

22 A. I DID.

23 Q. AND WHAT DID YOU PUBLISH?

24 A. THE FIRST THING WAS A REFERENCE BOOK CALLED "THE
25 INFORMATION SOURCES FOR ADVERTISING HISTORY."

26 Q. AND THIS WOULD HAVE LISTED ALL OF THE PLACES THAT
27 ONE COULD GO TO TO GET THIS HISTORICAL DATA?

28 A. IT WAS A COMPILATION OF BOTH WHAT'S CALLED AN

2055 1 ANNOTATED BIBLIOGRAPHY; THAT'S A LISTING OF ALL THE BOOKS
2 AND MAGAZINES AND OTHER TRADE SOURCES OF INFORMATION, WITH A
3 BRIEF DESCRIPTION OF WHAT THEY MIGHT -- WHAT THEY CONTAINED
4 THAT MIGHT BE OF INTEREST TO OTHER RESEARCHERS.

5 AND ALSO ARCHIVAL SOURCES; THAT IS, THE NATURE OF
6 THE DOCUMENTS HELD AT VARIOUS LIBRARIES AND OTHER KINDS OF
7 INSTITUTIONS, LIKE HISTORICAL RESEARCH CENTERS.

8 Q. EXPLAIN WHAT "ARCHIVES" ARE.

9 A. AN ARCHIVE IS A SPECIALIZED KIND OF LIBRARY.

10 IT'S A PLACE WHERE DOCUMENTS ARE KEPT FOR POSTERITY, AFTER
11 THEY HAVE BEEN DONATED BY, USUALLY, AN INDIVIDUAL OR
12 SOMETIMES A CORPORATION FOR THAT PURPOSE.

13 SO IT'S -- PHYSICALLY, IT LOOKS LIKE A LIBRARY,
14 BUT IT DOESN'T HAVE THE NORMAL KIND OF PUBLISHED BOOKS. IT
15 HAS COLLECTED PAPERS. THEY CAN BE PERSONAL PAPERS OF
16 INDIVIDUALS, LIKE CORRESPONDENCE. IT CAN BE CORPORATE
17 PAPERS. IT COULD BE COLLECTIONS OF OLD MAGAZINES, AND
18 THINGS LIKE THAT.

19 Q. OKAY. AND WHEN YOU LEFT THE UNIVERSITY OF
20 KANSAS, WHERE DID YOU GO?

21 A. I WENT TO THE UNIVERSITY OF BRITISH COLUMBIA IN
22 VANCOUVER, MY PRESENT EMPLOYER.

23 Q. JUST GIVE US A QUICK RUNTHROUGH THROUGH THE RANKS
24 OF PROFESSORSHIP.

25 A. I WENT THERE AS AN ASSOCIATE PROFESSOR OF
26 MARKETING AND WAS PROMOTED TO A FULL PROFESSOR IN

27 MID-1970S.

28 SINCE THEN, I HAVE HAD VARIOUS RESPONSIBILITIES,

2056

1 INCLUDING BEING A CURATOR OF WHAT'S WAS CALLED THE HISTORY
2 OF ADVERTISING ARCHIVES, OUR OWN COLLECTION OF MATERIALS
3 WITH RESPECT TO ADVERTISING AND ITS HISTORY.

4 AND I LEAD A TEACHING TEAM FOR THE MBA PROGRAM.

5 Q. OKAY. AND WHAT DOES THAT MEAN, LEADING A
6 TEACHING TEAM FOR THE MBA PROGRAM?

7 A. IT'S LIKE BEING A PLAYING CAPTAIN OF A SPORTS
8 TEAM. I'M ONE OF SEVERAL TEACHERS WHO TEACH AS A TEAM. WE
9 HAVE SOMETHING LIKE A BOOT CAMP. WE CALL IT OUR CORE
10 EXPERIENCE, WHERE FOR FOUR MONTHS, ALL OF OUR GRADUATE
11 STUDENTS ARE TOGETHER IN ONE ROOM AND A TEAM OF TEACHERS
12 WORK WITH THEM ON MAJOR PROJECTS, ON LARGE COMPLICATED
13 CASES, TAKING FIELD TRIPS TOGETHER, HAVING GUEST SPEAKERS,
14 AND DISCUSSING ALL OF THESE THINGS.

15 AND I CAPTAIN THAT TEAM.

16 Q. WITH RESPECT TO YOUR TEACHING, DO YOU ALSO DO
17 OUTSIDE LECTURING AT OTHER UNIVERSITIES?

18 A. I DO FROM TIME TO TIME.

19 Q. HAVE YOU BEEN A PEER REVIEWER?

20 A. YES. QUITE FRANKLY, I AM, FOR OTHER ACADEMIC
21 JOURNALS.

22 Q. OKAY. AND CAN YOU GIVE US AN IDEA, JUST THE
23 TYPES OF JOURNALS?

24 A. PRIMARILY, JOURNALS IN THE FIELDS OF ADVERTISING
25 AND MARKETING, LIKE THE JOURNAL OF CONSUMER RESEARCH, THE
26 JOURNAL OF MARKETING, THE JOURNAL OF ADVERTISING.

27 BUT ALSO, FOR SOME JOURNALS LIKE THE JOURNAL OF
28 THE AMERICAN MEDICAL ASSOCIATION, PUBLIC HEALTH JOURNALS,

2057

1 WHEN THEY GET MANUSCRIPTS THAT RELATE TO ADVERTISING OR
2 CONSUMER BEHAVIOR.

3 Q. DO YOU, IN THE ASPECT OF YOUR TEACHING, WRITING
4 AND RESEARCH, DEAL WITH PUBLIC RELATIONS?

5 A. I DO.

6 Q. CAN YOU TELL US WHAT PUBLIC RELATIONS IS.

7 A. PUBLIC RELATIONS IS A SET OF ACTIVITIES ENGAGED
8 IN THE FIRM THAT'S PART OF ITS OVERALL CORPORATE
9 COMMUNICATIONS EFFORTS.

10 WHERE WE ARE MOST FAMILIAR WITH ADVERTISING,
11 PUBLIC RELATIONS IS ACTIVITIES WHERE YOU DON'T PAY FOR THE
12 PAGES IN WHICH YOUR MESSAGE APPEARS. USUALLY, IT'S BY
13 WRITING STORIES THAT ARE DISTRIBUTED TO THE PRESS OR BY
14 STAGING EVENTS THAT WILL GET PRESS COVERAGE OR BY AUTHORIZING
15 MATERIALS FOR SPECIAL CIRCULATION TO TARGET AUDIENCES.

16 BUT IT'S DIFFERENT FROM THE KINDS OF ADVERTISING
17 WE ARE USED TO, BECAUSE YOU ARE NOT PAYING FOR THE TIME OR
18 SPACE IN WHICH THE MESSAGE APPEARS.

19 Q. NOW, HAVE YOU EVER WORKED FOR A PUBLIC RELATIONS
20 COMPANY?

21 A. NO, I HAVE NOT. I HAVE WORKED IN AN ADVERTISING
22 AGENCY CONTEXT THAT DID PUBLIC RELATIONS WORK. AND THAT'S
23 COMMON, THAT PUBLIC RELATIONS WILL BE DONE WITHIN AN
24 ADVERTISING AGENCY.

25 BUT I HAVEN'T WORKED FOR A FIRM THAT'S DEDICATED
26 ITSELF TO PUBLIC RELATIONS.

27 Q. IS THAT PART OF YOUR READING, WRITING AND
28 RESEARCH, THAT YOU ANALYZE PUBLIC RELATIONS ACTIVITIES?

2058

1 A. IT IS. IT'S PART OF THE TEACHING. IT'S IN ALL
2 THE TEXTBOOKS WE USE. IT'S A COMPONENT PART OF MY LIBRARY

3 IN MY OFFICE.

4 Q. AND AS PART OF YOUR WORK IN LOOKING AT
5 ADVERTISING AND THE HISTORY OF ADVERTISING, DO YOU LOOK AT
6 THE SOCIAL AND CULTURAL EFFECTS OF THAT ADVERTISING ON THE
7 CONSUMERS?

8 A. I DO.

9 Q. NOW, YOU HAVE PREVIOUSLY TESTIFIED AS AN EXPERT
10 WITNESS ON THESE SAME TOPICS?

11 A. I HAVE.

12 Q. YOU'VE BEEN ACCEPTED AS AN EXPERT WITNESS ON
13 THESE TOPICS IN OTHER COURTS?

14 A. I HAVE.

15 MR. BARRON: OBJECTION, YOUR HONOR. VAGUE AND
16 AMBIGUOUS AS TO "THESE TOPICS."

17 THE COURT: SUSTAINED.

18 DO YOU WANT ME TO STRIKE THE ANSWER?

19 MR. BARRON: I WASN'T QUICK ENOUGH. I'D
20 APPRECIATE IT, YOUR HONOR.

21 THE COURT: I'LL STRIKE THE ANSWER. IT'S VAGUE
22 AS TO WHAT YOU MEAN BY "THESE TOPICS."

23 MS. CHABER: Q. DR. POLLAY, HAVE YOU TESTIFIED
24 AS AN EXPERT WITNESS WITH RESPECT TO ADVERTISING?

25 A. YES, I HAVE.

26 Q. THE HISTORY OF ADVERTISING?

27 A. YES, I HAVE.

28 Q. BUSINESS ETHICS?

2059 1 A. YES, I HAVE.

2 Q. PUBLIC RELATIONS?

3 A. YES.

4 Q. CONSUMER RESEARCH?

5 A. YES.

6 Q. SOCIAL AND CULTURAL EFFECTS OF ADVERTISING?

7 A. YES.

8 Q. SOCIAL AND CULTURAL EFFECTS OF PUBLIC RELATIONS?

9 A. YES.

10 Q. CONSUMER BEHAVIOR AND PSYCHOLOGY?

11 A. YES.

12 Q. THE INFLUENCE ON THE MEDIA OF BUSINESSES?

13 A. YES.

14 Q. MARKETING?

15 A. YES.

16 Q. DID I MISS ANYTHING?

17 A. I WASN'T KEEPING A CHECKLIST. IT SOUNDS PRETTY
18 EXHAUSTIVE.

19 Q. OKAY. NOW, FIRST, YOU TESTIFIED HERE IN SAN
20 FRANCISCO A YEAR AGO, IN A CASE I WAS INVOLVED IN?

21 A. YES, I DID.

22 Q. OKAY. AND YOU BECAME INVOLVED IN CASES -- ONE OF
23 THE FIRST CASES TO EVER GO TO TRIAL IN THE 1980S?

24 A. YES.

25 Q. AND IN THE COURSE OF ALL OF THIS TIME, HAVE YOU
26 REMAINED CURRENT ON ISSUES WITH RESPECT TO ADVERTISING,
27 PUBLIC RELATIONS, MARKETING AND ALL OF THAT OTHER LONG LIST
28 THAT I GAVE WITH RESPECT TO THE CIGARETTE INDUSTRY?

2060 1 A. I HAVE.

2 Q. HAS THAT BECOME A SPECIALTY OF YOURS?

3 A. YES, IT HAS.

4 Q. DO YOU KNOW OF ANYONE ELSE WHO HAS MORE EXPERTISE
5 ON ISSUES RELATED TO CIGARETTE ADVERTISING, PUBLIC RELATIONS
6 AND THE EFFECTS ON CONSUMERS THAN YOURSELF?

7 I'M NOT TALKING ABOUT BRAGGING RIGHTS.

8 A. THERE ARE OTHER PEOPLE WHO HAVE SOME KNOWLEDGE OF
9 SOME PARTS. I DON'T HAVE A MONOPOLY ON THIS INFORMATION.

10 BUT I DON'T KNOW OF ANYONE WHO HAS SPENT AS MUCH
11 TIME OR HAS PUBLISHED AS MUCH ON THE TOPIC AS I HAVE.

12 Q. AND WITH RESPECT TO -- YOU INDICATED THAT YOU HAD
13 AN ADVERTISING ARCHIVE?

14 A. YES.

15 Q. AND THAT'S KEPT AND MAINTAINED BY THE UNIVERSITY
16 OF BRITISH COLUMBIA?

17 A. THAT'S CORRECT.

18 Q. AND THAT'S EXCLUSIVE TO CIGARETTE ADVERTISING?

19 A. IT'S NOT EXCLUSIVE TO CIGARETTE ADVERTISING, BUT
20 THAT IS BY FAR AND AWAY THE LARGEST AND MOST HEAVILY USED
21 COMPONENT PART OF IT.

22 Q. OKAY. AND CAN YOU GIVE US AN IDEA OF THE VOLUME
23 THAT WE'RE TALKING ABOUT THAT'S MAINTAINED IN THE ARCHIVES
24 IN RELATION TO CIGARETTE ADVERTISING?

25 A. WELL, THE MATERIALS FILL A ROOM ROUGHLY THIS
26 SIZE, FILLED WITH BOOKSHELVES AND CASES AND RACKS AND FILE
27 CABINETS. IT HAS ABOUT 8,000 EXAMPLES OF CIGARETTE
28 ADVERTISING. AND THAT'S A GROWING COLLECTION ITSELF.

2061 1 OF COURSE, MANY, MANY DOCUMENTS. NOW THERE ARE
2 ELECTRONIC FORMS OF VARIOUS DOCUMENTS. SO CD-ROMS AND THE
3 LIKE. SO AN EXTENSIVE COLLECTION OF MATERIALS.

4 LOTS OF NOTES, PARTICULARLY FROM TRADE SOURCES,
5 THINGS LIKE ADVERTISING AGE, PRINTERS INK, OR PROFESSIONAL
6 MAGAZINES IN THE ADVERTISING AND MARKETING PROFESSION.

7 Q. AND IN THE COURSE OF THE WORK THAT YOU DO, DO YOU
8 LOOK AT MAGAZINES LIKE ADVERTISING AGE AND SOME OF THE OTHER
9 ONES YOU JUST MENTIONED THAT WERE WRITTEN AT THE SAME TIME
10 AS HISTORIC DOCUMENTS WITHIN COMPANIES TO UNDERSTAND THOSE
11 DOCUMENTS?

12 A. YES, I DO.

13 MR. ESCHER: OBJECTION. VAGUE, YOUR HONOR.

14 THE COURT: IT WAS A GENERAL QUESTION. I'M
15 GOING TO ALLOW IT.

16 MS. CHABER: Q. NOW, WHEN YOU'RE WORKING AS AN
17 EXPERT WITNESS, SUCH AS YOU ARE IN THIS CASE, ARE YOU PAID
18 FOR YOUR TIME?

19 A. I'M NOT PERSONALLY PAID, BUT MY TIME IS BILLED
20 FOR.

21 THE UNIVERSITY RECEIVES THE MONEYS AND IT'S USED
22 TO SUPPORT GRADUATE STUDENTS AND OTHER EXPENSES ASSOCIATED
23 WITH THE ARCHIVES.

24 Q. AND I ASSUME THAT THE THREE DAYS THAT YOU'VE
25 SPENT HERE WAITING IN THE HALLWAY TO GET ON THE WITNESS
26 STAND, YOUR EXPENSES ARE BEING REIMBURSED BY MY OFFICE?

27 A. THAT'S CORRECT. I ASSUME SO TOO.

28 Q. OKAY.

2062 1 MS. CHABER: THIS WOULD BE A GOOD TIME.
2 DO YOU WANT TO TAKE THE BREAK?
3 THE COURT: JUDITH WANTS TO TAKE A BREAK.
4 JURORS, LET'S RECESS. LET'S TAKE A RECESS TO 20
5 AFTER 11:00. PLEASE CONTINUE TO FOLLOW THE ADMONITION.
6 WE'LL SEE YOU BACK AT 20 AFTER 11:00.

7 (RECESS TAKEN FROM 11:02 TO 11:25 A.M.)

8 THE COURT: WE'RE BACK ON THE RECORD.

9 MS. CHABER, YOU MAY PROCEED.

10 MS. CHABER: THANK YOU, YOUR HONOR.

11 Q. NOW, DR. POLLAY, WHEN YOU LOOK AT THE ISSUE OF
12 THE AWARENESS OF THE CONSUMER TO ADVERTISING AND MEDIA AND

13 HEALTH MESSAGES, WHAT KINDS OF THINGS DO YOU LOOK AT?

14 A. THERE'S MANY DIFFERENT THINGS. ONE WOULD BE THE
15 PERVERSIVENESS OF MEDIA AND THE FACT THAT THERE'S MULTIPLE
16 TYPES OF MEDIA WHERE ONE MIGHT ENCOUNTER ADVERTISING OR
17 REPRESENTATIONS OF ADVERTISING FOR SELLING, FOR THAT
18 MATTER.

19 SO THE VARIETY OF MEDIA, AND KNOWING HOW THE
20 MEDIA SCHEDULES THE MEDIA ACTIVITIES WOULD HELP UNDERSTAND
21 HOW FREQUENTLY PEOPLE WOULD LIKELY BE EXPOSED TO MESSAGES.

22 ALSO, SOMETIMES YOU CAN EVALUATE THE DESIGN OF
23 THE MEDIA, THAT IS, THE EXTENT TO WHICH THESE ARE VIVID, YOU
24 KNOW, THINGS THAT ARE IN COLOR, THINGS THAT ARE IN LARGE
25 FORMAT. BILLBOARDS REALLY HAVE FINE PRINT, IN CLASSIFIED
26 NEWS ADVERTISEMENTS IN A NEWSPAPER, SOMETHING LIKE THAT.

27 WE ALSO CONSIDER WHAT ARE CALLED DIRECT AND
28 INDIRECT EFFECTS; THAT IS, THE KINDS OF ADVERTISING

2063 1 INFLUENCES OR PUBLIC RELATIONS INFLUENCES, BOTH DIRECTLY ON
2 THE CONSUMER AND THROUGH INTERMEDIARIES.

3 WHAT'S CALLED THE TWO-STEP FLOW OF INFLUENCE,
4 THAT IF THE ADVERTISING MIGHT INFLUENCE A FRIEND OF MINE AND
5 THEN THE FRIEND TELLS ME SOMETHING, THAT THAT WOULD STILL BE
6 AN INFLUENCE BY THE ADVERTISING, BUT IT WOULD GO THROUGH OR
7 CALLED BE MEDIATED BY THE PEER, A FRIEND OR THE NEIGHBOR OR
8 THE FAMILY MEMBER, SOMETHING LIKE THAT.

9 Q. WOULD YOU BE ABLE TO ILLUSTRATE OR DIAGRAM THIS
10 MULTISTAGE PROCESS FOR INFLUENCING AND WHAT THE INFLUENCES
11 ARE ON CONSUMER AWARENESS IN ANY KIND OF FASHION THAT WOULD
12 BE HELPFUL TO THE JURY?

13 A. I THINK SO. I CAN GIVE YOU A LITTLE DIAGRAM THAT
14 WOULD AT LEAST HELP UNDERSTAND HOW ADVERTISING FITS WITH
15 PUBLIC RELATIONS AND SALES PROMOTION AND OTHER KIND OF SALES
16 SUPPORT ACTIVITIES, THINGS LIKE THAT, SO THAT YOU WOULD
17 UNDERSTAND THE TOTALITY OF CORPORATE COMMUNICATIONS.

18 Q. OKAY. WOULD YOU MIND STEPPING DOWN.

19 MR. BARRON: OBJECTION, YOUR HONOR. COULD WE --
20 BEFORE WE DO THIS, COULD WE ASK THE COURT TO HAVE THE
21 WITNESS, THROUGH QUESTIONS, ESTABLISH MORE OF A FOUNDATION
22 AS TO THE BASIS FOR WHAT HE'S NOW GOING TO OFFER.

23 I THINK THAT IS PERMITTED.

24 MS. CHABER: I THINK I DID.

25 THE COURT: I DON'T KNOW WHAT HE'S GOING TO
26 OFFER, SO I DON'T KNOW. I DON'T KNOW WHAT THE QUESTION IS
27 GOING TO BE.

28 MS. CHABER: THE QUESTION WAS THE INFLUENCE ON
2064 1 THE CONSUMER FROM THE VARIOUS DIFFERENT SOURCES THAT HE'S
2 INDICATED, ADVERTISING, PUBLIC RELATIONS, TWO-STEP
3 PROCESSES.

4 THE COURT: YOU WANT DR. POLLAY TO BE ASKED MORE
5 QUESTIONS ABOUT HIS BACKGROUND AND EXPERIENCE IN THIS AREA?

6 MR. BARRON: NOT JUST THE GENERAL QUESTION.

7 WHATEVER HE IS BASING HIS MULTISTEP, TWO-STEP,
8 WHATEVER THEY CALL IT, PROCESS.

9 THE COURT: ALL RIGHT. IF HE'S ABOUT TO
10 DESCRIBE A PROCESS, WHY DON'T YOU LAY A FOUNDATION ABOUT THE
11 INFORMATION IN THE PROCESS, IF THAT'S THE REQUEST.

12 MS. CHABER: Q. I DON'T THINK IT'S GOING TO
13 TAKE THAT LONG, SO YOU MIGHT NOT WANT TO SIT DOWN.

14 DR. POLLAY, UPON WHAT DO YOU BASE THE ANALYSIS
15 THAT YOU HAVE WITH RESPECT TO THE INFLUENCES ON THE
16 CONSUMER?

17 A. THE RESEARCH LITERATURE, AND THE REPRESENTATIONS

18 TYPICALLY MADE IN TEXTBOOKS, AND THE DIAGRAM I WAS INTENDING
19 TO SKETCH OUT WOULD ALSO BE A WAY OF PORTRAYING THE NATURE
20 OF THE BUDGETS I'VE SEEN FOR CORPORATE COMMUNICATIONS.

21 THE COURT: GO AHEAD AND ASK THE QUESTION. SEE
22 IF THERE'S AN OBJECTION.

23 MS. CHABER: Q. DR. POLLAY, WOULD YOU
24 ILLUSTRATE FOR US THE VARIOUS INFLUENCES ON THE CONSUMER
25 THAT WE'VE JUST TALKED ABOUT.

26 A. I'D BE GLAD TO.

27 (PREPARING DIAGRAM)

28 WHAT I THINK IS IMPORTANT TO UNDERSTAND IS THAT

2065 1 THE INDIVIDUAL -- I MUST MAKE APOLOGIES FOR WHAT'S CALLED MY
2 BOARD WORK. I HAVE BEEN WORKING ON THE COMPUTER FOR SO MANY
3 YEARS THAT MY WRITING IS NOT GOOD -- THAT THE INDIVIDUAL IS
4 IN A LARGER SOCIAL CIRCUMSTANCE SURROUNDED BY FAMILY, PEERS
5 OR FRIENDS -- THE FANCY WORD FOR "FRIENDS" -- OR EQUALS, AND
6 NEIGHBORS OR EXTENDED FAMILY.

7 Q. AND THAT'S WHAT'S IMMEDIATELY SURROUNDING THE
8 INDIVIDUAL?

9 A. THAT'S A WAY OF PORTRAYING THE FACT, AS WITH THE
10 CLICHE, THAT'S NO MAN IS AN ISLAND. NO WOMAN IS AN ISLAND,
11 AS WE ALL EXIST IN A FAMILY CONTEXT, IN A COMMUNITY CONTEXT,
12 WHERE WE HAVE FRIENDS AND ASSOCIATES.

13 AND PART OF OUR ATTITUDES, PART OF OUR KNOWLEDGE,
14 IT COMES FROM NOT ONLY WHAT WE LEARN FROM MEDIA AND THE
15 WORLD AROUND US, THE LARGER WORLD, BUT ALSO THROUGH THESE
16 OTHERS.

17 Q. SO IN THIS INFLUENCE CIRCLE, THE IMMEDIATE
18 INFLUENCES ARE THOSE WITH WHOM WE LIVE AND THOSE WITH WHOM
19 WE GO TO THE GROCERY STORE, AND THINGS LIKE THAT?

20 A. WELL, AND THEY'RE IMMEDIATE, PARTICULARLY IN THE
21 SENSE THAT THEY'RE FREQUENT; THAT IS, YOU'RE INTERACTING
22 WITH YOUR FAMILY MEMBERS ON A FREQUENT BASIS, WHERE PART OF
23 THE LARGER ENVIRONMENT WOULD INCLUDE OTHERS.

24 SO I'LL JUST SAY, YOU KNOW "OTHER PEOPLE" THAT WE
25 ENCOUNTER MUCH LESS FREQUENTLY.

26 SO IT MIGHT BE CELEBRITIES, SALESMEN, OTHER
27 PEOPLE LIKE, SAY, MINISTERS, PRIESTS AND THE LIKE, JUDGES.

28 SO PEOPLE WHO WE WOULD HAVE RESPECT FOR BUT WE

2066 1 DON'T ENCOUNTER RELATIVELY FREQUENTLY.

2 Q. SOME OF US ENCOUNTER THEM MORE FREQUENTLY.

3 THE COURT: THERE'S AN ASSUMPTION IN THAT
4 TESTIMONY THAT I'M NOT SURE IS TOTALLY WARRANTED. THAT'S
5 NOT A VIEW THAT'S UNIVERSALLY SHARED.

6 THE WITNESS: I HAVE PROFESSORS WHO SAY THE SAME
7 THING.

8 DOCTORS, NURSES, SOME OTHER PROFESSIONALS. SO
9 A VARIETY OF PEOPLE IN THE LARGER COMMUNITY THAT ONE
10 ENCOUNTERS FROM TIME TO TIME BUT NOT VERY FREQUENTLY.

11 MS. CHABER: IN THEIR PROFESSIONAL CAPACITY?

12 A. TYPICALLY, IN THEIR PROFESSIONAL CAPACITY. YOU
13 MIGHT IN A SMALL TOWN INTERACT ON A CASUAL BASIS WITH A
14 DOCTOR OR A JUDGE OR SOMETHING, IF YOU RAN INTO THEM ON THE
15 STREET. TYPICALLY, IN A LARGER CITY, IT'S IN A PROFESSIONAL
16 CAPACITY.

17 NOW, THE INDIVIDUAL AND THE FAMILY AND THIS KIND
18 OF INTIMATE SOCIAL WORLD ALSO EXISTS IN THE WORLD OF MEDIA.
19 SO I'LL JUST WRITE "MEDIA" HERE.

20 CONVENTIONALLY, WE DEFINE MEDIA, WE DIVIDE IT IN
21 HALF. WE HAVE BOTH THE PAGES OR TYPE OF MEDIA THAT'S
22 ADVERTISING THAT'S BOUGHT AND PAID FOR.

23 AND THEN THERE'S WHAT'S CALLED THE EDITORIAL;
24 THAT IS, THE PROGRAMMING ON THE TELEVISION STATION OR THE
25 PAGES IN THE NEWSPAPER OR MAGAZINE THAT ARE THE STORIES AND
26 THE EVENT.

27 Q. PRESUMABLY, NOT BOUGHT AND PAID FOR?

28 A. PRESUMABLY, NOT PAID AND PAID FOR.

2067 1 BUT THERE ARE SOME INFLUENCES HERE; THAT IS,
2 THERE IS AN EFFECT OF THE ADVERTISING MONEY ON THE
3 EDITORIAL.

4 AND THEN THE LAST BIG DOMAIN IS WHAT'S CALLED
5 "THE STREET."

6 Q. WHAT DOES THAT MEAN?

7 A. WELL, IT REFERS TO THE FACT THAT THE ENVIRONMENT
8 WE LIVE IN IS A VERY COMMERCIALLY DENSE ENVIRONMENT; THAT
9 IS, WE HAVE BILLBOARDS, WE HAVE BUS SHELTER ADVERTISING, WE
10 HAVE ADS ON THE INSIDES AND OUTSIDES OF BUSES, ON TAXI TOPS.

11 WE HAVE AN INCREDIBLE VARIETY OF SOURCES. SO
12 THIS IS WE'LL SAY "RETAIL" IN THE CASE OF TOBACCO. TOBACCO
13 IS RETAILED IN DRUGSTORES, CANDY STORES, GAS STATIONS,
14 CONVENIENCE STORES, SUPERMARKETS, ON AND ON. IT'S THE MOST
15 WIDELY DISTRIBUTED PRODUCT IN OUR ECONOMY.

16 IN ALL OF THOSE RETAIL ACTIVITIES, THERE WILL BE
17 COUNTLESS FORMS OF REPRESENTATIONS; THAT IS, THREE WILL BE
18 NEON PLATES, PUSH PLATES ON THE DOOR. THERE WILL BE CHANGE
19 TRAYS. THERE WILL BE CARRYING CASES. THERE WILL BE THINGS
20 ON THE CHECKOUT COUNTER THAT DIVIDE THE CHECKOUT THING.
21 THERE WILL BE PRICE SIGNS. THERE WILL BE SIGNS OUT IN THE
22 STREET THAT SAY "CIGARETTES, COFFEE AND BEER AVAILABLE
23 HERE," THINGS LIKE THAT.

24 SO QUITE A WIDE VARIETY HERE OF STORES, AND ALSO
25 A VARIETY OF, I'LL SAY, ADS, JUST TO USE A GENERAL TERM;
26 THAT IS, DIFFERENT TYPES OF SIGNS AND DISPLAYS AND ARTIFACTS
27 AND MATERIALS.

28 2068 SO IN THE STREET, THERE'S A WIDE VARIETY OF
1 STREET MEDIA.

2 NOW, CORPORATE COMMUNICATIONS --

3 Q. WHERE WOULD THAT FIT IN?

4 A. WELL, IT ESSENTIALLY SURROUNDS THIS WHOLE THING.
5 THAT IS, ALL OF THIS (INDICATING) WOULD BE ADVERTISING
6 SPENDING -- THE TERMINOLOGY VARIES A BIT FROM TRADE TO
7 TRADE -- BUT CERTAINLY ALL THE MONEY SPENT TO BUY PAGES IN
8 NEWSPAPERS AND MAGAZINES, TO BUY BILLBOARDS, WOULD BE
9 CONVENTIONALLY ADVERTISING MONEY.

10 THERE'S ALSO AN AREA CALLED "SALES," SALES
11 PROMOTION. THIS IS MONEY, SOMETIMES ALSO KNOWN AS PUSH
12 MONEY, GIVEN TO RETAILERS TO GET FAVORABLE DISPLAYS, TO GET
13 THEM TO CARRY THE CLOCKS ON THE BACK OF THE WALL, TO HAVE
14 THE DECALS ON THE WINDOWS, TO PUT UP THE SIGNS ABOUT THE
15 CONTESTS AND EVENTS AND SO ON. SO THERE'S AN EFFORT TO
16 INFLUENCE THE RETAIL ACTIVITY HERE.

17 THERE'S ANOTHER EVENT UP HERE WHICH IS CALLED
18 "SPONSORSHIP." THIS IS WHERE YOU SPONSOR A PARTICULAR
19 EVENT, AND IN SPONSORING AN EVENTS, SAY LIKE A TENNIS
20 TOURNAMENT OR AN AUTOMOBILE RACE OR LIKE THAT, A FASHION
21 SHOW, YOU CAN DO CONVENTIONAL FORMS OF ADVERTISING, BY
22 BUYING ADS TO CALL ATTENTION TO THAT EVENT, AND THE EVENT
23 WILL GET COVERAGE IN THE NEWSPAPER.

24 SO YOU DON'T EVEN HAVE TO PAY FOR IT. THE
25 EVENING SPORTS NEWS WILL COVER THE X CUP RACING, SO THAT
26 YOUR BRAND WILL GET MENTIONED AND YOU'LL GET THAT
27 ADVERTISING EXPOSURE.

28
2069

SO YOU CAN INFLUENCE THE EDITORIAL CONTENTS

1 THROUGH SPONSORSHIP. SO THAT'S THIS DOMAIN HERE,
2 "SPONSORSHIP."

3 AGAIN, I APOLOGIZE FOR THE MESS I'M MAKING OF
4 THIS.

5 THEN THERE'S THE WHOLE OTHER DOMAIN OVER HERE
6 CALLED "PUBLIC RELATIONS," WHICH IS SENDING MATERIALS TO THE
7 MEDIA; THAT IS, TO THE NEWSPAPER PUBLISHERS, THE SCIENTIFIC
8 EDITORS, THE MAGAZINES, IN HOPES THAT THEY'LL PUBLISH IT OR
9 IT WILL INFLUENCE THE WAY THEY WRITE UP THEIR STORIES.

10 AND ALSO SENDING OTHER PUBLIC RELATIONS MATERIALS
11 TO PEOPLE, LIKE DOCTORS AND NURSES, TO LIBRARIES, TO OTHER
12 INSTITUTIONS, SO THAT THEIR OPINIONS ARE INFLUENCED, AND
13 THAT IN TURN WILL INFLUENCE WHAT THEY SAY TO THE FAMILY
14 MEMBERS, AND AS I MENTIONED, THE TWO-STEP FLOW OF
15 INFLUENCE.

16 ALL OF THIS ADVERTISING ACTIVITY OR THE PUBLIC
17 RELATIONS ACTIVITY CAN HAVE AN EFFECT, BOTH DIRECTLY ON THE
18 INDIVIDUAL, IF THE INDIVIDUAL SEES THE AD OR SEES THE PUBLIC
19 RELATIONS ACTIVITY, AND INDIRECTLY; THAT IS, THE ADVERTISING
20 CAN INFLUENCE THE PEER GROUP, AND THEN THE PEER GROUP CAN
21 INFLUENCE THE INDIVIDUAL.

22 I MEAN, IT'S STILL AN EFFECT OF ADVERTISING, BUT
23 IT'S THROUGH THE MECHANISM OF GETTING THE PEERS TO COURT THE
24 IDEAS OF THE ADVERTISING.

25 THE SAME THING HERE WITH PUBLIC RELATIONS
26 ACTIVITIES CAN INFLUENCE DOCTORS AND NURSES, CAN INFLUENCE
27 FAMILY MEMBERS, AND IN TURN, BE AN INFLUENCE ON THE
28 INDIVIDUALS.

2070

1 SO IN THIS KIND OF PORTRAYAL, THE INDIVIDUAL IS
2 AT THE CENTER OF A WIDE VARIETY OF ACTIVITIES. AND THE
3 SALES PROMOTION, ADVERTISING, SPONSORSHIP AND PUBLIC
4 RELATIONS ACTIVITY ESSENTIALLY TRIES TO SURROUND THE
5 INDIVIDUAL, TO GAIN AS MUCH CONTROL AS POSSIBLE AS TO HOW
6 THE INDIVIDUAL WILL PERCEIVE THE PRODUCT OR BRAND, BECAUSE
7 THERE'S -- THE WHOLE ART OF MANAGEMENT OF THE COMMUNICATIONS
8 IS TO GAIN CONTROL OVER HOW YOUR PRODUCT IS PERCEIVED.

9 Q. OKAY. AND THE PUBLIC RELATIONS, THAT YOU HAVE
10 GONE DOWN.

11 HAVE WE LEFT ANY PORTIONS OFF THERE?

12 A. NOT INTENTIONALLY. I MEAN, I GUESS, YOU KNOW,
13 SALESMEN ARE -- IN THIS PARTICULAR CONTEXT, WE DON'T
14 ENCOUNTER SALESMEN OVER CIGARETTES. SO IF WE ARE TALKING
15 ABOUT CARS, IT MIGHT BE A DIFFERENT CASE. SO THAT'S NOT
16 RELEVANT.

17 SO THERE IS NO PUBLIC RELATIONS ACTIVITY THERE.
18 THAT ACTIVITY WOULD BE CALLED SALES SUPPORT OR SALES
19 TRAINING. THAT WOULD BE ANOTHER PART OF THE MARKETING
20 COMMUNICATION; THAT IS, HOW YOU TRAIN SALESMEN.

21 PUBLIC RELATIONS ACTIVITY ITSELF CAN BE QUITE
22 EXTENSIVE. AS I SAY, THERE CAN BE EFFORTS TARGETING --

23 MR. BARRON: EXCUSE ME, YOUR HONOR. AGAIN,
24 COULD WE PROCEED BY QUESTION AND ANSWER.

25 I THOUGHT THERE WAS JUST ONE QUESTION. I'M KIND
26 OF LOST.

27 THE COURT: THE QUESTION WAS BROAD AND
28 OPEN-ENDED.

2071

1 IF YOU HAD OBJECTED TO IT AS BEING VAGUE, I WOULD
2 HAVE SUSTAINED, BUT YOU DIDN'T OBJECT. THIS IS WITHIN THE
3 QUESTION THAT WAS ASKED.

4 BUT LET'S GO AHEAD WITH THE NEXT QUESTION. IF
5 YOU THINK THE QUESTIONS ARE BROAD, THEN YOU NEED TO OBJECT
6 TO THE QUESTIONS.

7 MR. BARRON: I APOLOGIZE. I THOUGHT IT WAS
8 NARROW. I THOUGHT IT WAS TO FILL IN THE RIGHT SIDE OF THAT
9 CIRCLE. I GUESS I GOT LOST.

10 THE COURT: THAT'S ALL RIGHT. LET'S GO WITH THE
11 NEXT QUESTION.

12 MS. CHABER: Q. ARE THERE ANY OTHER INFLUENCES
13 THAT PUBLIC RELATIONS HAS, EITHER DIRECTLY OR INDIRECTLY?

14 A. WELL, THERE ARE INFLUENCES OF PUBLIC RELATIONS ON
15 THE WHOLE REGULATORY PROCESS, THAT IS, ON GOVERNMENT AND
16 WHAT GOVERNMENT DOES OR DOES NOT DO.

17 THAT WOULD INFLUENCE, IN TURN, HOW INDIVIDUALS
18 FEEL ABOUT, YOU KNOW, IF A PARTICULAR PRODUCT IS HAZARDOUS
19 OR NOT. IS GOVERNMENT DOING ANYTHING ABOUT IT?

20 SO YES, THAT WOULD BE AN AREA WE HAVEN'T YET
21 TALKED ABOUT.

22 Q. OKAY. AND DOES THAT COMPLETE THE CIRCLE OF
23 INFLUENCE?

24 A. YES. I MEAN, IT'S, AS I SAY, PRETTY MUCH OF A
25 MESSY DIAGRAM, WHICH I WISH I HAD TIME TO DO IT BETTER.

26 BUT YES, THAT'S, I THINK, A GENERAL WHAT WE CALL
27 A SCHEMATIC OR A DIAGRAM FOR HOW IT CAN BE PERCEIVED.

28 MS. CHABER: I HAVE BAD NEWS FOR YOU. IT'S

2072

1 GOING TO GET MARKED AS AN EXHIBIT AND YOU DON'T GET TO DO IT
2 OVER AGAIN.

3 I WOULD ASK DO HAVE IT MARKED, YOUR HONOR. WE
4 DON'T HAVE TO DO IT RIGHT NOW IF YOU DON'T --

5 THE COURT: LET'S DO IT.

6 WHAT'S THE NEXT NUMBER, TATSUO?

7 MS. CHABER: THE NEXT NUMBER THAT I HAVE -- I
8 BELIEVE 1890 WOULD BE THE NEXT NUMBER, BECAUSE WE HAVE
9 PREMARKED SOME OTHER ONES THAT WE'LL BE USING.

10 THE COURT: LET'S HAVE THIS DIAGRAM MARKED AS
11 1890 FOR IDENTIFICATION.

12 (DOCUMENT MORE PARTICULARLY
13 LISTED IN THE INDEX MARKED
14 FOR IDENTIFICATION PLAINTIFFS'
15 EXHIBIT # 1890)

16 MS. CHABER: Q. NOW, IN THE COURSE OF YOUR
17 WORK, DR. POLLAY, AND YOUR TEACHING AND YOUR RESEARCH AND
18 YOUR WRITING, YOU HAVE LOOKED AT THE HISTORY OF ADVERTISING
19 OVER THE YEARS AND HOW IT HAS CHANGED?

20 A. I HAVE. PRIMARILY, IN THE 20TH CENTURY; THAT IS,
21 IN THE LAST HUNDRED YEARS.

22 Q. OKAY. WAS THERE VERY MUCH ADVERTISING BEFORE THE
23 TURN OF THE CENTURY?

24 A. NOT AS WE KNOW IT. THE MODERN ADVERTISING
25 AGENCY, THAT IS, PROFESSIONAL APPLIED PSYCHOLOGY TO THE
26 CREATION OF ADVERTISING AND PROFESSIONAL COPYWRITERS AND ART
27 DIRECTORS IS PRETTY MUCH AN EARLY 20TH CENTURY DEVELOPMENT.

28 THERE WERE NEWSPAPERS THAT HAD SOME SORT OF

2073

1 ADVERTISEMENTS IN THE 19TH CENTURY AS WELL. DEPENDING ON
2 HOW YOU DEFINE "ADVERTISING," YOU CAN FIND SOME THINGS THAT
3 YOU CAN ARGUE ARE ADVERTISING GOING BACK SEVERAL HUNDRED
4 YEARS. BUT WHAT WE THINK OF AS ADVERTISING IS A 20TH
5 CENTURY PHENOMENON.

6 Q. AND TELL US WHAT SOME OF THE DIFFERENT SOURCES OF
7 ADVERTISING ARE.

8 AND I GUESS BY "SOURCES" -- MAYBE "SOURCES" IS

9 WRONG. TYPES -- TYPES OF, I GUESS. TELL US THE DIFFERENT
10 TYPES OF ADVERTISING THERE ARE.

11 A. I GUESS I'M STILL NOT QUITE CLEAR ON YOUR
12 QUESTION.

13 THERE ARE DIFFERENT TYPOLOGIES OF ADVERTISING
14 WHICH ONE WOULD BREAK IT DOWN BY THE MEDIA TYPES.

15 Q. THAT'S SORT OF WHAT I MEANT, THE MEDIA TYPES.

16 A. THERE WILL BE BROADCAST ADVERTISING, WHICH
17 HISTORICALLY WAS RADIO, THEN TV, AND NOW MIGHT INCLUDE
18 INTERNET FORMS OF ADVERTISING. THERE'S PRINT ADVERTISING,
19 PRIMARILY MAGAZINES AND NEWSPAPERS, BUT ALSO HANDBILLS AND
20 FLYERS AND BROCHURES AND PAMPHLETS AND CATALOGS, THINGS LIKE
21 THAT.

22 THERE'S RETAIL OR STREET ADVERTISING, WHICH WOULD
23 BE BILLBOARDS, BOTH WITH WHAT ARE CALLED EIGHT-SHEET, WHICH
24 ARE THE SMALLER SIZE BILLBOARDS THAT TYPICALLY ARE ON THE
25 SIDES OF BUILDINGS AND RETAIL SITES IN CITIES, AND THEN THE
26 LARGER 30-SHEET SIZES THAT ARE ON HIGHWAYS. SO BILLBOARDS
27 OF VARIOUS KINDS.

28 SIGNAGE, TRANSIT ADVERTISING. TRANSIT

2074 ADVERTISING IS A LARGE CATEGORY, BECAUSE IT INCLUDES THINGS
1 THAT ARE BOTH INSIDE AND OUTSIDE OF BUSES.

3 AND NOW YOU SEE THE ENTIRETY OF A BUS BEING
4 COMPLETELY TRANSFORMED INTO A MOBILE BILLBOARD. BUT ALSO
5 THINGS ON SUBWAYS OR TRAINS, COMMUTER TRAINS, THINGS LIKE
6 THAT.

7 SHELTERS, THE SHELTERS WHERE PEOPLE WILL WAIT FOR
8 A BUS WILL HAVE ADVERTISING ON THEM. SO THERE'S A VARIETY
9 OF OUTDOOR FORMATS FOR ADVERTISING.

10 SO THAT GENERAL DOMAIN IS SOMETIMES KNOWN AS
11 STREET OR OUTDOOR ADVERTISING.

12 AND THEN ANOTHER VERY IMPORTANT CATEGORY IS
13 WHAT'S CALLED POINT OF SALE, POS FOR THE TRADE ABBREVIATION.

14 Q. AND WHAT'S THAT?

15 A. JUST THE INITIALS FOR POINT OF SALE.

16 SO IT'S THOSE THINGS I WAS MENTIONING EARLIER YOU
17 MIGHT ENCOUNTER IN A RETAIL STORE; THAT IS, IT'S THE CLOCK
18 ON THE WALL THAT HAS THE BRAND NAME AND DECAL ON THE DOOR,
19 OR THE PLATE THAT YOU PUSH AND PULL TO KIND OF OPEN AND SHUT
20 THE DOOR THAT HAS THE ADVERTISING OR THE SIGNS IN THE
21 WINDOWS, OR THE SIGNS THAT INDICATE THE PRICES FOR THINGS OR
22 THE SPECIAL COUPON OFFERS.

23 SO ALL OF THAT IS, YOU KNOW, SPECIAL DISPLAYS AND
24 PROMOTIONS AT THE STORE LEVEL. AND END OF AISLE DISPLAYS
25 AND CHECKOUT DISPLAYS.

26 THEN, THERE'S ANOTHER FORM WHICH IS CLOSELY
27 RELATED TOO, WHICH WOULD BE SPECIAL FORMS OF PACKAGING. YOU
28 PUT TOGETHER A SPECIAL PACKAGE AND APPLY TO GET ONE FREE, 50

2075 PERCENT EXTRA FOR NO EXTRA CHARGE, OR BUY TWO OF THESE, GET
1 A BASEBALL CAP OR SOME OTHER PREMIUM ITEM IT'S CALLED. SO
2 THE OFFER OF SPECIALTY ADVERTISING ITEMS AS AN INCENTIVE FOR
3 THE SALE OF THE GOODS IS ANOTHER FORM OF ADVERTISING OR
4 PROMOTION.

6 Q. LET ME ASK YOU: WHAT IS THE PURPOSE OF
7 ADVERTISING?

8 A. WELL, THE WORD ACTUALLY COMES FROM OLD LATIN WORD
9 OR TERM. IT MEANS TO TURN TOWARD AND PROMOTE.

10 SO "ADVERTISING" MEANS TO TURN TOWARD, AND
11 PROMOTE MEANS TO ADVANCE. IT'S TO CREATE SALES; THAT IS,
12 IT'S TO TURN THE CONSUMER'S ATTENTION TOWARD A PRODUCT TO
13 PROMOTE SALES.

14 AND, YOU KNOW, IN BUSINESS, THE BOTTOM LINE IS:
15 ARE WE GOING TO MAKE ANY MONEY FROM DOING THIS? YOU DON'T
16 SPEND ON ADVERTISING UNLESS YOU HAVE SOME FAITH THAT IT'S
17 GOING TO CONTRIBUTE TO THE BOTTOM LINE BY INDUCING MORE
18 SALES THAN WOULD OTHERWISE BE THE CASE.

19 Q. WITH RESPECT TO THE INDIVIDUAL OR THE CONSUMER,
20 IS THE CONSUMER -- IS ADVERTISING SOMETHING THAT CONSUMERS
21 ARE ALWAYS AWARE OF, THAT THEY'RE BUYING A PRODUCT BECAUSE
22 OF AN INFLUENCE FROM THE ADVERTISING?

23 A. NO. JUST THE OPPOSITE.

24 Q. WHAT DO YOU MEAN?

25 A. WELL, THERE'S A VERY OLD SAYING THAT COMES FROM
26 THE EARLY PART OF THE 20TH CENTURY THAT SAYS: "ADVERTISING
27 IS THE ART OF INSTRUCTING CONSUMERS AND THEN CAUSING
28 CONSUMERS TO FORGET WHERE THEY RECEIVED THEIR INSTRUCTION."

2076 1 THAT IS, WE'RE TYPICALLY NOT AWARE OF WHERE OUR
2 ATTITUDES ARE SHAPED ABOUT VARIOUS PRODUCTS, EVEN WHERE WE
3 LEARN ABOUT, YOU KNOW, WHAT PRODUCTS.

4 IF YOU HAVE A FLU AND YOU GO TO THE DRUGSTORE,
5 YOU'RE CHOOSING FROM FLU REMEDIES. YOU KNOW, WE'RE UNCLEAR
6 AS TO WHERE WE'VE LEARNED ABOUT THESE VARIOUS ALTERNATIVES
7 AND WHAT ROLE ADVERTISING MIGHT PLAY IN DIRECTING OUR CHOICE
8 FOR THE VARIOUS ALTERNATIVES THAT WE CHOOSE.

9 Q. NOW, THERE IS SOME ADVERTISING THAT IS DIRECT AND
10 THE PERSON KNOWS THEY'RE RESPONDING TO IT AND BUYS A PRODUCT
11 AS A RESULT OF IT.

12 FOR EXAMPLE, JEANS ARE ON SALE AT A PARTICULAR
13 STORE THIS WEEK FOR \$19.

14 THERE'S THAT TYPE OF ADVERTISING THAT IS USUALLY
15 TRACEABLE TO THE SALE?

16 A. THERE'S THAT FORM. ALTHOUGH EVEN IN THAT
17 EXAMPLE, YOUR ATTITUDES TOWARDS A PARTICULAR BRAND OF JEANS
18 WOULD HAVE BEEN COLORED BY A HISTORY OF HAVING BEEN EXPOSED
19 TO ADVERTISING FOR THAT BRAND OVER THE YEARS. AND THE FACT
20 THAT YOU KNOW YOU SAW IT, SAY, ADVERTISED AT 19.95, THAT
21 WOULD JUST BE THE FINAL STRAW, YOU KNOW, THAT LED YOU TO
22 MAKE THAT PURCHASE. BUT YOUR PURCHASE, IN FACT, WOULD HAVE
23 BEEN INFLUENCED BY A WHOLE HISTORY OF ADVERTISING.

24 BUT THERE ARE CERTAINLY ADS WHICH ARE DIRECT
25 ACTION ADS, WHERE YOU SEE AN AD ON THE TELEVISION AND
26 THERE'S AN 800 NUMBER PROVIDED, AND YOU GET ENTHUSED AND YOU
27 WRITE DOWN THE 800 NUMBER. YOU CALL THE 800 NUMBER AND GET
28 THE INFORMATION AND SO ON.

2077 1 THERE ARE SOME FORMS OF ADVERTISING THAT ARE
2 DIRECT RESPONSE, EVEN THOUGH MOST ADVERTISING IN OUR WORLD
3 IS NOT THAT NATURE. IT'S MORE INDIRECT IN THE WAY IT WORKS.

4 Q. AND THE PURPOSE OF IT BEING INDIRECT IS WHAT?

5 A. TO SHAPE OUR OPINIONS, ATTITUDES, BELIEFS,
6 GENERALLY OUR PERCEPTIONS ABOUT THE PRODUCTS AND HOW GOOD
7 THEY ARE, HOW SAFE THEY ARE, HOW TRENDY THEY ARE. YOU KNOW,
8 HOW WILL I BE PERCEIVED IF I'M SEEN WEARING OR USING OR
9 DRIVING A PARTICULAR PRODUCT.

10 SO IT'S, SAY, WORKING AT A PSYCHOLOGICAL LEVEL TO
11 INFLUENCE OUR PERCEPTIONS.

12 Q. CAN ADVERTISING FOR ONE BRAND INFLUENCE US TO BUY
13 A DIFFERENT BRAND OF THE SAME PRODUCT?

14 MR. ESCHER: OBJECTION. VAGUE. LACK OF
15 FOUNDATION, YOUR HONOR.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES.

18 MS. CHABER: Q. HOW DOES THAT WORK?

19 A. WELL, WHEN YOU ADVERTISE A -- ANYTIME YOU
20 ADVERTISE, YOU ARE ADVERTISING BOTH THE BRAND AND THE
21 PRODUCT.

22 SO, FOR EXAMPLE, IF YOU WERE TO GET IN YOUR CAR
23 AT THE LUNCH BREAK AND HEAR A MCDONALD'S AD, YOU MIGHT END
24 UP EATING A HAMBURGER. IT MIGHT NOT BE A MCDONALD'S
25 HAMBURGER. MAYBE THAT'S NOT THE FIRST HAMBURGER PLACE YOU
26 CAME ACROSS, BUT YOU MIGHT BE STIMULATED TO EAT A HAMBURGER
27 BECAUSE OF THAT.

28 SO THE AD BOTH CALLS OUR ATTENTION TO AND MAKES

2078 US CHANGE OUR PERCEPTIONS ABOUT THE PRODUCT CATEGORY AS WELL
1 AS THE SPECIFICS OF THE BRAND.

2 Q. OKAY. DO BUSINESSES HAVE MEANS OF COMMUNICATING
3 WITH THE PUBLIC IN FORMS THAT ARE NOT ADVERTISING OR
4 PROMOTION?

5 A. SURE, THEY HAVE. THEY HAVE EVERY MEANS POSSIBLE
6 TO COMMUNICATE WITH THE PUBLIC.

7 Q. CAN YOU GIVE US SOME EXAMPLES.

8 A. WELL, THEY CAN PRODUCE PAMPHLETS, BROCHURES,
9 PACKAGE INSERTS. THEY CAN TAKE OUT PUBLIC INFORMATION
10 ADVERTISING TO COMMUNICATE INFORMATION IN DETAIL TO THE
11 PUBLIC.

12 I MEAN, THE TYPES OF ADVERTISING WE SEE WHICH
13 DON'T HAVE MUCH INFORMATION, THAT ARE MORE ROMANCING A
14 PRODUCT THAN INFORMING ABOUT THE PRODUCT, THAT'S A STRATEGIC
15 CHOICE AS TO HOW THAT WORKS.

16 THEY HAVE THE CAPACITY, IF THEY WANTED TO, TO
17 PROVIDE A LOT OF INFORMATION.

18 Q. AND HAVE YOU LOOKED AT THE TIME PERIOD BEFORE --
19 LET ME GO BACK A SECOND.

20 YOU HAVE REVIEWED SOME INFORMATION ABOUT LESLIE
21 WHITELEY?

22 A. YES.

23 Q. AND YOU KNOW SHE WAS BORN IN 1959?

24 A. YES.

25 Q. IN YOUR OPINION, WOULD ADVERTISING THAT HAD BEEN
26 PRODUCED PRIOR -- COULD ADVERTISING THAT HAD BEEN PRODUCED
27 PRIOR TO HER BIRTH HAVE SOME INFLUENCE ON HER?

2079 A. YES.

1 Q. AND TELL US HOW THAT WOULD WORK.

2 A. PRIMARILY BECAUSE THEY WOULD HAVE AFFECTED THE
3 PERCEPTIONS, ATTITUDES OF HER FAMILY, AND THAT'S BOTH HER
4 PARENTS AND ANY OLDER SIBLINGS; THAT IS, THE BROTHERS AND
5 SISTER WHO ARE OLDER IN AGE, WHO HAD SEEN THOSE ADS, IN SOME
6 CASES, IN OLD MAGAZINES THAT CAN LIE AROUND A HOUSE FOR
7 AWHILE. THEY MIGHT STILL BE AVAILABLE FOR HER TO SEE.

8 BUT EVEN WITHOUT THAT, THEY ARGUABLY HAVE BEEN AN
9 INFLUENCE IN THE WAY IN WHICH CIGARETTES WERE PERCEIVED BY
10 HER FRIENDS, NEIGHBORS AND PEERS.

11 MR. ESCHER: OBJECTION, YOUR HONOR. HE'S GONE
12 BEYOND ANSWERING THE QUESTION.

13 THE COURT: OVERRULED. THIS IS RESPONSIVE.

14 MS. CHABER: Q. YOU WERE CUT OFF IN THE MIDDLE
15 OF THE ANSWER.

16 A. WELL, YOUR QUESTION WAS, YOU KNOW, WOULD
17 ADVERTISING, SAY FROM EARLIER THAN THE 1950S, BEFORE HER
18 BIRTH, STILL BE OF RELEVANCE TO HER AND --

19 THE COURT: THE QUESTION WAS "COULD."

20 MS. CHABER: "COULD."

21 THE COURT: THE QUESTION WAS "COULD."

22 THE WITNESS: RIGHT. AND IT'S MY OPINION THAT

24 IT COULD.

25 MS. CHABER: Q. AND WOULD ADVERTISING THAT HER
26 PARENTS HAD SEEN HAVE -- COULD ADVERTISING THAT HER PARENTS
27 HAD SEEN HAVE AN IMPACT ON HER?

28 A. YES.

2080 1 Q. AND IN THE SAME FASHION?

2 A. YES.

3 MS. CHABER: I DON'T KNOW HOW MUCH TIME WE
4 HAVE. I HAVE A SERIES OF EXHIBITS, YOUR HONOR, THAT HAVE
5 BEEN PREMARKED, AND THESE ARE YOUR COPIES.

6 THE COURT: OKAY.

7 MS. CHABER: 1860, A MARLBORO AD; 1861, ANOTHER
8 MARLBORO AD; 1862, MARLBORO; 1863, MARLBORO; 1864, A
9 MARLBORO AD.

10 I HAVE YOUR COPIES HERE.

11 THE COURT: I KNOW. THANKS.

12 MS. CHABER: I'M SORRY. I'M OFFERING THESE NOT
13 QUITE IN ORDER. THERE'S LOGIC TO MY PRESENTATION.

14 THE COURT: WHEN YOU SAY "YOU'RE OFFERING," YOU
15 ARE NOT OFFERING THEM INTO EVIDENCE. YOU'RE JUST HAVING
16 THEM MARKED?

17 MS. CHABER: HAVING THEM MARKED, YES.

18 THE COURT: OKAY.

19
20 MS. CHABER: 1854, WHICH IS A PORTION OF A LOOK
21 MAGAZINE FROM JUNE 9TH, 1959. 1855, A PORTION OF A LOOK
22 MAGAZINE FROM DECEMBER 31ST, 1963.

23 THE CLERK: WE USED THOSE NUMBERS, 1854, 1855.

24 MS. CHABER: OKAY. I HAVE TO CHANGE THOSE TWO.

25 LET ME GO ON AND I'LL FIX THOSE.

26 THE COURT: ARE THESE NUMBERS THAT YOU JUST GAVE
27 GOING TO BE OUR NUMBERS?

28 MS. CHABER: THE 1854 AND 1855, I'VE JUST BEEN

2081

1 INFORMED ARE USED.

2 THE COURT: YOU ARE GIVING THEM DIFFERENT
3 NUMBERS THAN THAT?

4 MS. CHABER: I WILL GIVE THEM DIFFERENT NUMBERS.

5 THE COURT: DO YOU WANT TO TELL US THOSE NUMBERS
6 NOW?

7 MS. CHABER: I WANT TO DO THE OTHER ONES NOW. I
8 KNOW WHAT'S LEFT. I DON'T WANT TO GIVE ANOTHER NUMBER THAT
9 MAY HAVE BEEN USED.

10 THE COURT: WE'RE NOT MARKING THE LOOK MAGAZINE
11 YET?

12 MS. CHABER: CORRECT.

13 THE COURT: OKAY.

14 MS. CHABER: 1858, LIFE MAGAZINE, JULY 21, 1967,
15 PORTIONS OF THE MAGAZINE. 1859, PORTIONS OF THE SATURDAY
16 EVENING POST FROM MARCH 23RD, 1968.

17 THE COURT: MARCH WHAT?

18 MS. CHABER: 23RD, 1968.

19 THE COURT: OKAY.

20 MS. CHABER: THE NUMBERS SKIP OVER.

21 1888, A PORTION OF A LOOK MAGAZINE FROM MARCH
22 22ND, 1966. AND 1889, A PORTION OF THE SATURDAY EVENING
23 POST FROM JUNE 4TH, 1966.

24 (DISCUSSION OFF THE RECORD)

25 MS. CHABER: 1891, YOUR HONOR, WILL BE THE LOOK
26 MAGAZINE FROM JUNE 9TH, 1959.

27 THE COURT: AND 1892 IS THE LOOK MAGAZINE FROM
28 DECEMBER 31, 1963?

2082

1 MS. CHABER: THAT'S CORRECT.
2 THANK YOU, YOUR HONOR.

3 THOSE ARE ALL THE JUDGE'S COPIES.

4 (DOCUMENTS MORE PARTICULARLY
5 LISTED IN THE INDEX PRE-MARKED
6 FOR IDENTIFICATION PLAINTIFFS'
7 EXHIBIT #S 1860-1864, 1858-1859,
8 1888-1892)

9 MS. CHABER: DO YOU HAVE ANY OBJECTIONS TO USING
10 THEM FOR DEMONSTRATIVE PURPOSES?

11 MR. ESCHER: NOT FOR DEMONSTRATIVE PURPOSES.

12 MR. BARRON: IF THERE'S A FOUNDATION LAID, NOT
13 AT ALL.

14 MS. CHABER: I WILL ESTABLISH THAT.

15 Q. DR. POLLAY, IN THE COURSE OF YOUR LOOKING AT
16 ADVERTISING, CIGARETTE ADVERTISING OVER THE YEARS, HAVE YOU
17 LOOKED AT VARIOUS CAMPAIGNS OR VARIOUS ADVERTISING FOR
18 DIFFERENT BRANDS OF CIGARETTES?

19 A. I HAVE.

20 Q. AND HAVE YOU LOOKED AT ADVERTISING FOR MARLBORO
21 CIGARETTES?

22 A. YES.

23 Q. AND I'M HANDING YOU WHAT'S BEEN MARKED 1860, 61,
24 62, 63 AND 64.

25 CAN YOU LOOK AT THOSE ADS FOR A MOMENT.

26 A. (EXAMINING)

27 THE COURT: AFTER YOU DEAL WITH THIS GROUP,
28 LET'S GO TO LUNCH.

2083

1 THE WITNESS: YES.

2 MS. CHABER: Q. DO YOU RECOGNIZE THOSE ADS AS
3 BEING ADS THAT YOU HAVE COLLECTED IN YOUR ARCHIVES OF THE
4 HISTORY OF ADVERTISING?

5 A. I DO.

6 Q. AND DO THEY ALL PREDATE 1969?

7 A. THEY DO.

8 MS. CHABER: DO YOU WANT TO STOP THERE, YOUR
9 HONOR?

10 THE COURT: OKAY. AS I INDICATED TO YOU
11 EARLIER, JURORS, I WANT TO SPEND A FEW MINUTES' TIME OVER
12 THE NOON HOUR WITH THE LAWYERS, CONTINUING IN THIS PROCESS
13 HOPEFULLY OF EXPEDITING THE PROCESS OF DEALING WITH THESE
14 DOCUMENTS, SO BASICALLY WE DON'T GET BOGGED DOWN ON LEGAL
15 ISSUES ABOUT THESE DOCUMENTS WHILE YOU HAVE TO WAIT FOR US
16 TO DO OUR WORK.

17 SO I'D RATHER GIVE YOU AN EXTRA HALF HOUR FOR
18 LUNCH SO THAT YOU CAN ENJOY YOURSELVES, AND WE WILL DO THIS
19 WORK.

20 LET ME ASK COUNSEL. I'LL MEET YOU HERE, SAY, AT
21 1:25. BUT FOR THE JURY, WE'LL START AGAIN AT 2:00 O'CLOCK
22 THIS AFTERNOON.

23 SO PLEASE CONTINUE TO FOLLOW ADMONITION. WE'LL
24 SEE YOU BACK AT 2:00 O'CLOCK.

25 (LUNCH RECESS TAKEN AT 12:00 NOON)

26

27

28

2084

1 AFTERNOON SESSION 2:07 P.M.
2 WEDNESDAY, FEBRUARY 2, 2000
3 THE COURT: WE ARE BACK ON THE RECORD.
4 AND MS. CHABER, YOU MAY PROCEED.

5 MS. CHABER: THANK YOU. I HAVE A SERIES OF
6 ADDITIONAL ADS THAT HAVE BEEN PREMARKED, YOUR HONOR.
7 THE COURT: OKAY.
8 MS. CHABER: PLAINTIFFS' EXHIBIT 1866. I'M JUST
9 GOING TO IDENTIFY THEM BY NUMBER BECAUSE HE'S GOING TO GO
10 THROUGH EACH OF THEM.

11 THE COURT: THAT'S FINE.
12 MS. CHABER: 1867, 1868, 1869, 1870, 1871, 1872,
13 1873, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883,
14 1884, 1885, AND 1886.

15 (DOCUMENTS MORE PARTICULARLY
16 LISTED IN THE INDEX PREMARKED
17 FOR IDENTIFICATION PLAINTIFFS'
18 EXHIBITS # 1866-1873, 1875-1886)

20 DIRECT EXAMINATION (CONTINUED)
21 BY MS. CHABER: Q. DR. POLLAY, I'VE HANDED YOU
22 ALL OF THE EXHIBITS THAT WE MARKED BOTH BEFORE LUNCH AND
23 AFTER LUNCH, AS WELL AS EXHIBITS 1857 AND 1874 THAT WERE
24 OFFERED DURING PATSY WHITTEKER'S TESTIMONY.

25 AND I'D ASK YOU TO TAKE A QUICK LOOK AT ALL OF
26 THESE ADS. AND I'M JUST GOING TO ASK YOU SOME GENERAL
27 QUESTIONS ABOUT THEM, AND THEN WE CAN TALK MORE
28 SPECIFICALLY.

2085
1 A. (EXAMINING)
2 Q. DID I WALK AWAY WITH SOME OF THEM?
3 I DID.
4 MS. CHABER: YOUR HONOR, I WOULD WITHDRAW 1882.
5 (PLAINTIFF'S EXHIBIT NO. 1882 WITHDRAWN)
6 THE WITNESS: YES, I HAVE REVIEWED THESE.
7 MS. CHABER: Q. DOCTOR, ARE YOU FAMILIAR WITH
8 ALL OF THESE ADS?

9 A. I AM.
10 Q. AND ARE THERE ANY ADS THAT YOU HAVE BEEN PROVIDED
11 THAT ARE AFTER 1969?

12 A. I DON'T THINK SO. I THINK THEY ALL PREDATE 1969.
13 Q. AS WE GO THROUGH THEM, IF YOU CAN HELP US WITH
14 EITHER A DATE OR A TIME FRAME, WOULD YOU DO SO?

15 A. GLADLY.
16 Q. NOW, DO THEY REPRESENT ADS THAT ARE OF MORE THAN
17 ONE CIGARETTE MANUFACTURER?
18 A. THEY DO.
19 Q. AND DO THEY REPRESENT ADS OVER A HISTORICAL TIME
20 PERIOD?
21 A. THEY REPRESENT ADS FROM THE LATE '50S AND 1960S.
22 Q. OKAY. AND ARE THERE DIFFERENT SORT OF CATEGORIES
23 OF ADS AS OPPOSED TO DIFFERENT BRANDS OF ADS?
24 A. YES. THERE'S SOME ADS WHICH ARE ENDORSEMENTS,
25 FOR EXAMPLE. THAT WOULD BE A CATEGORY OF AD.

26 Q. OKAY.
27 A. THEY ARE NOT ALL CELEBRITY ENDORSEMENTS.
28 Q. WHAT DIFFERENT CATEGORIES OF ADS DO YOU HAVE UP

2086
1 THERE?
2 A. WELL, I HAVEN'T GOT A TALLY OF THEM, BUT THERE
3 ARE SOME --

4 MR. BARRON: EXCUSE ME, YOUR HONOR. I'M NOT
5 FOLLOWING.

6 VAGUE AND AMBIGUOUS AS TO THE CONCEPT OF
7 "CATEGORIES OF ADS."

8 THE COURT: SUSTAINED.

9 MS. CHABER: Q. ARE THERE ADS THAT HAVE

10 CERTAIN CONSISTENT THEMES, ALTHOUGH NOT NECESSARILY THE SAME
11 BRAND?

12 A. YES. AND ALSO CONSISTENCY OF INSTITUTIONAL
13 STYLES.

14 Q. OKAY. AND ARE THERE ADS THAT, WITHIN CERTAIN
15 TIME PERIODS, WERE CHARACTERISTIC OF ADS THAT APPEARED
16 DURING THOSE TIME PERIODS ONLY?

17 A. YES.

18 Q. CAN YOU TELL US WHAT TYPES OF ADS FOR WHICH THERE
19 WERE SPECIFIC TIME PERIODS, SORT OF THE GENERAL NATURE,
20 WITHOUT GOING SPECIFICALLY INTO EACH AD AT THE MOMENT?

21 MR. BARRON: AGAIN, YOUR HONOR, VAGUE AND
22 AMBIGUOUS.

23 I'M NOT SURE THE WITNESS IS BEING ASKED TO
24 TESTIFY OR INTERPRET THE ADS.

25 IF SO, I WOULD OBJECT ON THE BASIS OF
26 INAPPROPRIATE OPINION RATHER THAN BEING A MATTER OF COMMON
27 KNOWLEDGE, WHICH CAN BE DECIDED WITHOUT OPINION.

28 THE COURT: HOLD ON.

1 GUESS YOU'RE SAYING IT'S VAGUE AS TO WHAT'S
2 MEANT BY "WHAT TYPES OF ADS"?

3 MR. BARRON: EXACTLY.

4 THE COURT: I'LL SUSTAIN. SHE CAN CLARIFY THAT.

5 MR. BARRON: THANK YOU.

6 MS. CHABER: Q. DR. POLLAY, WE WERE TALKING
7 ABOUT THE INFLUENCES ON THE INDIVIDUAL AND HOW ADVERTISING
8 AND PROMOTIONAL AND PUBLIC RELATIONS WOULD HAVE THEIR
9 EFFECTS. YOU LISTED THINGS DOWN LIKE CELEBRITIES, FOR
10 EXAMPLE.

11 ARE THERE ADS THAT ARE THERE THAT ARE WHAT YOU
12 WOULD CALL CELEBRITY ADS?

13 A. YES. THERE ARE SEVERAL TYPES WITHIN THAT GENERAL
14 CATEGORY AS WELL.

15 Q. CAN YOU PICK A FEW OUT AND I'LL PUT THEM ON THE
16 OVERHEAD, AND WE CAN TALK ABOUT THEM.

17 THE COURT: I TAKE IT THERE'S NO OBJECTION TO
18 THESE BEING SHOWN?

19 MR. BARRON: NO OBJECTION.

20 MR. ESCHER: THE ONLY OBJECTION WE HAVE IS THE
21 RELEVANCE OBJECTION WE DISCUSSED EARLIER.

22 THE COURT: THE OBJECTION IS NOT FOUNDATIONAL.
23 IT'S RELEVANCE?

24 MR. ESCHER: THAT'S RIGHT.

25 THE COURT: OVERRULED.

26 MR. BARRON: FOR THE RECORD, I SUPPOSE I SHOULD
27 STATE WE DID JOIN IN THAT OBJECTION.

28 THE COURT: I THINK WHEN ANY DEFENDANT MAKES AN
2088

1 OBJECTION, IT'S DEEMED THAT ALL HAVE MADE IT OR WHEN NOBODY
2 MAKES ANY.

3 MR. BARRON: I STATED "NO OBJECTION" BEFORE HE
4 SPOKE.

5 THE COURT: SO YOU JOIN IN THAT. OKAY.

6 LET ME JUST TALK TO THE LAWYERS FOR MINUTE.

7 MS. CHABER: YOU KEEP SORTING, DOCTOR, WHILE WE
8 DO THAT.

9 (COURT AND COUNSEL CONFER OUTSIDE

10 THE PRESENCE OF THE JURY)

11 THE COURT: WE ARE BACK ON THE RECORD.

12 MS. CHABER.

13 MS. CHABER: Q. FIRST OF ALL, DR. POLLAY, LET
14 ME JUST ASK YOU THIS QUESTION: IS THE ENVIRONMENT WITH

15 RESPECT TO SMOKING ATTITUDES AND AWARENESS DIFFERENT TODAY
16 THAN IT WAS IN THE 1940S, '50S, '60S, '70S?

17 A. VERY DIFFERENT.

18 Q. OKAY. AND IS THE ADVERTISING THAT WE'RE LOOKING
19 AT FROM THE TIME PERIOD IN THE 1940S, 1950S AND 1960S?

20 A. YES.

21 Q. AND WHEN I ASK YOU QUESTIONS ABOUT THESE ADS, I'M
22 ASKING YOU AS A HISTORIAN, AS A PERSON WHO DEALS WITH
23 ADVERTISING AND THE HISTORY OF ADVERTISING, AND THE EFFECT
24 ON THE CONSUMER.

25 WILL YOU CONFINE YOUR ANSWERS TO THE CONSUMER
26 AWARENESS OF THE TIME WHEN THE ADS WERE AVAILABLE?

27 A. OKAY.

28 Q. DR. POLLAY, WERE THESE ALL COMMERCIALLY AVAILABLE
2089

1 ADS THAT WE HAVE BEFORE US?

2 A. YES, I BELIEVE SO. IF THERE IS ANY EXCEPTION TO
3 THAT, LIKE A TRADE AD, I'LL CALL IT TO YOUR ATTENTION, IF IT
4 SHOULD ARISE.

5 I DIDN'T SCAN THE WHOLE SET WITH THAT QUESTION IN
6 MIND. I BELIEVE THEY ARE.

7 Q. AND YOU'LL KNOW THEM, IF AND WHEN ONE COMES UP?

8 A. YES.

9 Q. OKAY. NOW, I BELIEVE WE WERE SEPARATING THEM
10 INTO CATEGORIES.

11 WHAT'S THE FIRST CATEGORY?

12 A. THESE ARE SPORT CELEBRITIES AND THESE ARE
13 NONSPORT CELEBRITIES.

14 Q. LET'S START WITH THOSE. LET'S START WITH THE
15 SPORTS CELEBRITIES, SINCE I THINK BY --

16 THE COURT: IF YOU ARE GOING TO SHOW SOMETHING
17 THAT'S NOT IN EVIDENCE, I NEED TO ASK WHETHER THERE IS ANY
18 OBJECTION TO IT BEING SHOWN.

19 MR. BARRON: PROBABLY NOT. I DON'T KNOW WHICH
20 ONES.

21 THE COURT: WHY DON'T YOU TELL HIM THE NUMBER.

22 MS. CHABER: I WILL GIVE THEM THE NUMBERS IN A
23 GROUP. MAYBE THAT WAY --

24 MR. BARRON: SO WE ARE ALL ON THE SAME PAGE,
25 COULD WE HAVE THE DATE ALSO, YOUR HONOR, AND WHATEVER THE
26 PUBLICATION IS?

27 THE COURT: WHY DON'T YOU DO THIS, MS. CHABER.
28 BEFORE YOU SHOW SOMETHING TO THE JURY, ASK THE WITNESS WHAT
2090

1 THE DATE OF IT IS, AND IF HE KNOWS ANYTHING ABOUT ITS
2 DISSEMINATION OR PUBLICATION.

3 AND THEN EITHER YOU CAN OFFER IT INTO EVIDENCE OR
4 YOU CAN ASK WHETHER YOU CAN DISPLAY IT. I CAN ASK THE
5 DEFENSE WHETHER THEY OBJECT TO IT. THIS IS THE ORDERLY WAY
6 TO PROVIDE.

7 IS THAT ALL RIGHT?

8 MS. CHABER: THE ONLY PROBLEM IS THE DISTANCE
9 BETWEEN ME AND HIM, AND THIS BEING THE COPIES. I CAN DO IT
10 UP THERE, AND THEN I'LL SHOW THEM AFTER.

11 THE COURT: OKAY.

12 MS. CHABER: Q. 1866.

13 A. THESE ARE THE SPORTS CELEBRITIES IN THE ORDER OF
14 THE EXHIBIT NUMBER, WHATEVER YOU CALL IT, IDENTIFICATION
15 NUMBERS.

16 Q. THESE ARE SOMEWHAT IN ORDER OF DATE BUT NOT
17 NECESSARILY.

18 I'M TRYING TO SEE IF THERE IS A SHORT-CIRCUITED
19 WAY TO DO IT OTHER THAN ONE BY ONE.

20 THE COURT: THAT'S FINE.
21 IF YOU CAN PUT THEM IN GROUPS IN SOME WAY, THAT'S
22 FINE.
23 MS. CHABER: THEY ARE IN GROUPS.
24 THE COURT: WHATEVER. YOU PROCEED THE WAY YOU
25 WANT.
26 MS. CHABER: YES. I AM TRYING TO NOT HAVE TO
27 RUN BACK AND FORTH. OKAY.
28 I THINK I HAVE A SOLUTION, YOUR HONOR, THAT'S
2091 GOING TO WORK.
1 THE COURT: OKAY.
2 MS. CHABER: Q. OKAY. DR. POLLAY, WE'RE
3 LOOKING AT THE CATEGORY OF SPORTS CELEBRITIES; CORRECT?
4 A. THAT'S CORRECT.
5 Q. OKAY. AND CAN YOU TELL US WHAT THE EARLIEST
6 ADVERTISEMENT YOU HAVE THERE, AND IDENTIFY IT BY EXHIBIT
7 NUMBER.
8 A. EXHIBIT 1869.
9 Q. OKAY. AND DO YOU KNOW WHAT PUBLICATION THAT IT'S
10 FROM?
11 A. I BELIEVE IT'S FROM LIFE MAGAZINE. AND THIS
12 CAMPAIGN RAN IN COMPARABLE MAGAZINES, WHICH WOULD BE LIFE,
13 LOOK, COLLIER'S, SATURDAY EVENING POST.
14 THAT IS, THE LARGE FORMAT, COLOR, PRINTED
15 MAGAZINES.
16 MS. CHABER: ANY OBJECTION TO SHOWING 1869?
17 THE COURT: CAN WE GET THE PERIOD OF TIME?
18 MR. BARRON: THE DATE.
19 MS. CHABER: I'M SORRY.
20 THE WITNESS: 1949.
21 THE COURT: ANY OBJECTION?
22 YOU'RE ASKING NOW TO SHOW IT?
23 MS. CHABER: YES.
24 THE COURT: ANY OBJECTION TO IT BEING SHOWN?
25 MR. ESCHER: NO, YOUR HONOR.
26 MR. BARRON: NO, YOUR HONOR.
27 THE COURT: OKAY. YOU MAY SHOW IT.
2092
1 MS. CHABER: Q. DOCTOR, WE HAVE AN AD, "ALWAYS
2 BUY CHESTERFIELD. THEY SATISFY"?
3 A. THAT'S CORRECT.
4 Q. AND THEN IT'S IDENTIFIED AS "THE BASEBALL MAN'S
5 CIGARETTE"?
6 A. THAT'S CORRECT.
7 Q. AND CAN YOU IDENTIFY WHO SOME OF THOSE PEOPLE
8 ARE?
9 THAT WAS THE YEAR I WAS BORN, SO I DON'T KNOW.
10 A. THERE ARE A FEW NAMES THAT REMAIN FAMOUS. THERE
11 WERE SUCH STARS, THEY'RE STILL WELL-KNOWN. TED WILLIAMS,
12 JOE DIMAGGIO AND STAN MUSIAL ARE THE THREE UP AT THE TOP,
13 AND OVER AT THE RIGHT, SORT OF AT 11:00 O'CLOCK, 1:00
14 O'CLOCK AND 3:00 O'CLOCK, IF YOU KNOW WHAT I MEAN.
15 AND THE OTHERS ARE ALSO BASEBALL STARS OF THE
16 TIME.
17 Q. AND WHAT WOULD THE CONSUMER COME AWAY WITH FROM
18 LOOKING AT THIS AD?
19 MR. ESCHER: OBJECTION, YOUR HONOR. LACK OF
20 FOUNDATION.
21 THE COURT: OVERRULED.
22 THE WITNESS: I THINK THE CONSUMER'S CONCLUSION
23 WOULD BE THAT IF A PROFESSIONAL ATHLETE FELT COMFORTABLE
24 SMOKING, BEING THAT THEIR PHYSICAL PERFORMANCE IS THE HEART

25 OF THEIR INCOME-EARNING CAPACITY, THERE IS NO REASON WHY THE
26 AVERAGE CITIZEN SHOULDN'T FEEL COMFORTABLE.

27 MS. CHABER: Q. WHAT'S THE NEXT EXHIBIT NUMBER
28 BY DATE?

1 A. 1885.

2 Q. AND WHAT'S THE DATE ON THAT?

3 A. 1950.

4 Q. AND WOULD THIS HAVE BEEN IN A COMMERCIAL
5 PUBLICATION?

6 A. YES. I DON'T RECALL THE SPECIFIC ONE, BUT IT
7 WOULD HAVE BEEN, I THINK, LIFE MAGAZINE.

8 THAT'S ACTUALLY WHERE IT'S -- THOSE TYPES OF
9 MAGAZINES ARE PRIMARILY THE SOURCES FROM WHICH OUR ARCHIVES
10 HAVE BEEN ASSEMBLED. THAT'S TEARING APART OLD MAGAZINES OF
11 THAT NATURE.

12 MS. CHABER: YOUR HONOR, JUST SO WE DO THIS AS
13 WE GO ALONG, I'M OFFERING 1869 IN EVIDENCE.

14 THE COURT: ANY OBJECTION TO 1869?

15 MR. ESCHER: OTHER THAN THE RELEVANCE OBJECTION
16 WE HAD EARLIER.

17 THE COURT: OVERRULED. 1869 IS RECEIVED.

18 (DOCUMENT MORE PARTICULARLY
19 LISTED IN THE INDEX RECEIVED
20 IN EVIDENCE AS PLAINTIFFS'
21 EXHIBIT # 1869)

22 MS. CHABER: I'LL OFFER 1885 INTO EVIDENCE AND
23 SEEK TO DISPLAY IT.

24 THE COURT: ANY OBJECTION?

25 FIRST -- I GUESS THERE ARE TWO QUESTIONS.

26 ANY OBJECTION TO IT BEING DISPLAYED?

27 MR. ESCHER: NO, YOUR HONOR.

28 MR. BARRON: NO, YOUR HONOR.

2094 1 THE COURT: THERE IS NO OBJECTION TO 1885 BEING
2 SHOWN.

3 MR. BARRON: OR IT GOING INTO EVIDENCE.

4 THE COURT: WHAT?

5 MR. BARRON: OR IT GOING INTO EVIDENCE.

6 THE COURT: 1885 IS RECEIVED.

7 (DOCUMENT MORE PARTICULARLY
8 LISTED IN THE INDEX RECEIVED
9 IN EVIDENCE AS PLAINTIFFS'
10 EXHIBIT # 1885)

11 MS. CHABER: Q. DR. POLLAY, THIS ADVERTISEMENT
12 FOR LUCKY STRIKE, THERE'S SOME LANGUAGE ON THE
13 ADVERTISEMENT. LET ME ASK YOU JUST A COUPLE OF QUESTIONS,
14 GENERAL QUESTIONS IN CONNECTION WITH THIS.

15 WHEN YOU'RE LOOKING AT ADVERTISING AND ANALYZING
16 IT WITH RESPECT TO ITS CONTENT, IS THERE BOTH IMPLICIT
17 CONTENT AND EXPLICIT CONTENT?

18 A. YES.

19 Q. AND CAN YOU TELL THE JURY WHAT THAT MEANS AND
20 WHAT THE DISTINGUISHMENT IS?

21 A. WELL, WHETHER THINGS ARE SAID OUTRIGHT OR WHETHER
22 THEY'RE IMPLIED IN THE LANGUAGE OR CONVEYED THROUGH THE
23 NATURE OF THE IMAGERY OR THE TONE OF THE ADVERTISING OR THE
24 NATURE OF THE TOPOGRAPHY, SOMETHING LIKE THAT, THE LATTER
25 WOULD BE IMPLICIT COMMUNICATIONS, WHEREAS IF IT'S SOMETHING
26 SAID POINT BLANK, THAT WOULD BE EXPLICIT.

27 Q. AND THIS "L.S./M.F.T." AT THE BOTTOM, WHAT IS
28 THAT?

2095

1 A. THAT WAS A SLOGAN PHRASE THAT THEY USED IN ALL OF
2 THEIR RADIO COMMERCIALS. IT WAS THE INITIALS OR ACRONYM OR
3 THE PHRASE THAT FOLLOWS: "LUCKY STRIKE MEANS FINE
4 TOBACCO."

5 Q. AND WHO IS THAT THERE ENDORSING THIS LUCKY
6 STRIKE?

7 A. THAT'S JESSE OWENS, FAMOUS TRACK STAR.

8 Q. AND WHAT WOULD THE CONSUMER COME AWAY WITH
9 LOOKING AT THIS AD BACK AT THE TIME THAT THE AD EXISTED?

10 A. THAT CIGARETTES WOULDN'T GET YOU WINDED, AMONG
11 OTHER THINGS. IF A TRACK STAR WHOSE LUNG CAPACITY IS
12 ESSENTIAL TO HIS PERFORMANCE IN HIS SPORT FELT COMFORTABLE
13 SMOKING, THE AVERAGE CITIZEN COULD FEEL COMFORTABLE SMOKING.

14 Q. AND JESSE OWENS IS QUOTED AS SAYING, "I SMOKE
15 LUCKIES REGULARLY - THEY TASTE SO MILD AND SMOOTH"?

16 A. YES. THE COPY GOES ON TO SAY, "THERE'S NEVER A
17 ROUGH PUFF."

18 Q. AND THEN, AT THE TOP, THERE'S SOME LANGUAGE THAT
19 SAYS: "THESE SCIENTIFIC TESTS CONFIRMED BY INDEPENDENT
20 CONSULTING LABORATORIES PROVE LUCKY STRIKE MILDEST OF THE
21 SIX MAJOR BRANDS TESTED."

22 WHAT DOES THAT LANGUAGE -- WHAT EFFECT WOULD THAT
23 HAVE ON AN INDIVIDUAL LOOKING AT IT?

24 MR. ESCHER: OBJECTION. LACK OF FOUNDATION,
25 YOUR HONOR.

26 THE COURT: OVERRULED.

27 THE WITNESS: IT WOULD SUGGEST THAT SCIENTIFIC
28 RESEARCH HAS BEEN EMPLOYED TO VALIDATE THE CLAIMS IN THE

2096 1 ADVERTISEMENT.

2 MS. CHABER: Q. ARE YOU AWARE OF ANY
3 SCIENTIFIC RESEARCH DONE AT THE TIME THAT VALIDATES THE
4 CLAIM?

5 A. I'M NOT, NO.

6 Q. AND WHAT'S THE NEXT EXHIBIT IN TIME?

7 A. 1884.

8 Q. AND WHAT IS THE TIME PERIOD?

9 A. THIS ONE, I'M APPROXIMATING. I DON'T HAVE THE
10 EXACT DATE. BECAUSE OF THE NATURE OF THE CAMPAIGN, I
11 BELIEVE IT TO BE FROM 1952 OR '53.

12 Q. YOU BELIEVE IT'S IN THE EARLY 1950S, BUT YOU
13 CAN'T SAY PRECISELY WHAT DATE?

14 A. THAT'S CORRECT. IT'S DEFINITELY, I THINK, BEFORE
15 1955, BECAUSE BY THAT TIME CHESTERFIELD HAD A FILTERED
16 VERSION AND WAS ADVERTISING BOTH IN THE ADS.

17 Q. AND THIS ONLY ADVERTISES --

18 A. THIS ONLY ADVERTISES THE REGULAR.

19 MS. CHABER: I WOULD OFFER 1884 AND SEEK TO
20 DISPLAY IT.

21 THE COURT: LET'S JUST FIND OUT, BEFORE I ASK IF
22 THERE IS AN OBJECTION, WHERE IT APPEARS.

23 MS. CHABER: Q. DO YOU KNOW, DR. POLLAY, WHERE
24 IT APPEARED?

25 A. NO, NOT WITH SPECIFIC CERTAINTY, EXCEPT THAT IT
26 WOULD HAVE COME FROM A MASS CIRCULATION MAGAZINE LIKE LIFE
27 OR SATURDAY EVENING POST.

28 Q. THIS ISN'T THE TYPE OF ADVERTISEMENT THAT WOULD

2097 1 TEND TO BE IN A TRADE MAGAZINE?

2 A. NO. NO. THIS IS NOT A TRADE AD. THIS IS A
3 CONSUMER-DIRECTED AD.

4 MS. CHABER: WITH THAT CLARIFICATION, I WOULD
5 OFFER 1884 AND SEEK TO DISPLAY IT.

6 THE COURT: TWO QUESTIONS.
7 MR. ESCHER: WE HAVE NO OBJECTION TO IT BEING
8 DISPLAYED, YOUR HONOR. WE HAVE THE CONTINUING OBJECTION ON
9 THE RELEVANCE ISSUE.

10 I DON'T SEE THAT IT MAKES A LOT OF SENSE TO KEEP
11 MAKING THAT OBJECTION.

12 THE COURT: OKAY. DO YOU HAVE A PROBLEM WITH MY
13 GIVING A CONTINUING LINE OF OBJECTION?

14 AS I UNDERSTAND IT, JUST SO THE RECORD IS CLEAR,
15 THE CONTINUING LINE OF OBJECTION IS TO THE ADMISSION INTO
16 EVIDENCE OF EACH OF THESE ADS THAT HAVE BEEN IDENTIFIED, THE
17 OBJECTION BEING RELEVANCE.

18 BUT IN NO CASE IS THERE AN OBJECTION TO IT BEING
19 SHOWN TO THE JURY.

20 DO I HAVE THAT RIGHT OR DOES IT EXTEND TO IT
21 BEING SHOWN TO THE JURY?

22 MR. ESCHER: THE OBJECTION EXTENDS TO IT BEING
23 SHOWN TO THE JURY, YOUR HONOR.

24 THE COURT: OKAY. ALL RIGHT.

25 I'LL OVERRULE IT AS TO 1884. I'M GOING TO HAVE
26 TO TAKE THESE ON A ONE-BY-ONE BASIS, BUT I WILL ALWAYS
27 ASSUME THAT YOU HAVE MADE THAT OBJECTION TO IT, SO YOU DON'T
28 NEED TO STAND UP AND REPEAT IT, IF THAT'S YOUR PREFERENCE.

2098 1 MR. ESCHER: WOULD THE SAME BE THE CASE FOR THE
2 FOUNDATION OBJECTIONS TO THE FOLLOW-UP QUESTIONS WITH
3 RESPECT TO THESE DOCUMENTS THAT ARE THE SAME AS THE ONES
4 WE'VE ALREADY DONE?

5 THE COURT: I THINK THE QUESTION BEING -- WHY
6 DON'T YOU IDENTIFY THE QUESTION THAT YOU'RE OBJECTING TO.
7 MAYBE WE CAN GET A CONTINUING LINE OF OBJECTION.

8 MR. ESCHER: IT'S THE QUESTION RELATING TO HIS
9 OPINION AS TO HOW CONSUMERS WOULD HAVE INTERPRETED OR WHAT
10 IMPRESSION THEY WOULD HAVE HAD FROM THE AD.

11 THE COURT: IS THERE ANY OBJECTION TO MY GIVING
12 A CONTINUING LINE OF OBJECTION?

13 MS. CHABER: NO, YOUR HONOR.

14 THE COURT: OKAY.

15 MR. ESCHER: THANK YOU.

16 THE COURT: THEN YOU HAVE THOSE CONTINUING LINES
17 OF OBJECTIONS.

18 MR. BARRON: JUST FOR CLARITY'S SAKE, I BELIEVE
19 THE OBJECTION THAT HE WAS MAKING, AS I UNDERSTOOD IT, WAS
20 LACK OF FOUNDATION, AND WHAT ELSE WAS DISCUSSED, WHICH IS
21 EVIDENCE CODE SECTION 8014.

22 THE COURT: UNDERSTOOD.

23 1884 IS RECEIVED.

24 (DOCUMENT MORE PARTICULARLY
25 LISTED IN THE INDEX RECEIVED
26 IN EVIDENCE AS PLAINTIFFS'
27 EXHIBIT # 1884)

28 MS. CHABER: Q. DOCTOR, WHO IS ADVERTISING

2099 1 CHESTERFIELD IN THIS ADVERTISEMENT?

2 A. A BASEBALL STAR BY THE NAME OF JACKIE ROBINSON.

3 Q. AND WAS JACKIE ROBINSON A FAMOUS BASEBALL STAR?

4 A. YES, HE WAS VERY FAMOUS. NOT ONLY WAS HE THE
5 MOST VALUABLE PLAYER, HE WAS THE ONE THAT BROKE THE COLOR
6 BAR INTO BASEBALL, BEING THE FIRST IDENTIFIED AS NEGRO
7 ADMITTED INTO PROFESSIONAL SPORTS.

8 Q. IT HAS HIM QUOTED IN THE AD AS WELL AS DISPLAYING
9 HIM: "TAKE MY TIP. SMOKE CHESTERFIELD. MUCH MILDEN"?

10 A. IT DOES.

11 Q. AND WHAT WOULD THE CONSUMER AT THAT TIME PERCEIVE
12 THIS AD -- OR HOW WOULD THE CONSUMER AT THE TIME PERCEIVE
13 THIS AD?

14 A. THAT SMOKING WAS COMPATIBLE WITH BEING A
15 PROFESSIONAL ATHLETE, SO IT WAS COMPARABLE WITH BEING AN
16 EVERYDAY CITIZEN.

17 Q. WHAT IS THE NEXT EXHIBIT IN POINT OF TIME?

18 A. 1873.

19 Q. AND WHAT IS THE TIME FRAME?

20 A. I BELIEVE THIS IS 1956.

21 Q. AND IS THIS AN ADVERTISEMENT THAT WOULD HAVE
22 APPEARED IN A COMMERCIAL PUBLICATION -- I MEAN CONSUMER
23 PUBLICATION?

24 A. YES, IT IS.

25 MS. CHABER: I'D MOVE 1873 INTO EVIDENCE, AND
26 DISPLAY.

27 THE COURT: IT'S RECEIVED.

28 (DOCUMENT MORE PARTICULARLY

2100 1 LISTED IN THE INDEX RECEIVED
2 IN EVIDENCE AS PLAINTIFFS'
3 EXHIBIT # 1873)

4 MS. CHABER: Q. NOW, A LOT OF THINGS ARE
5 HAPPENING HERE.

6 FIRST OF ALL, WHO ARE THE CELEBRITIES, THE SPORTS
7 FIGURES THAT ARE DISPLAYED?

8 A. THERE'S ONLY ONE CELEBRITY DISPLAYED THAT'S BOTH
9 IN UNIFORM AND PLAYING, AND ALSO SHOWN OUT OF UNIFORM AND
10 SMOKING, AND THAT WAS NORM VAN BROCKLIN OF THE LOS ANGELES
11 RAMS.

12 Q. AND BY BEING THE LOS ANGELES RAMS, WE KNOW IT'S
13 CERTAINLY NOT CURRENT.

14 A. THAT'S CORRECT.

15 Q. AND WAS HE A FAMOUS FOOTBALL PLAYER?

16 A. HE WAS VERY FAMOUS.

17 Q. AND WITHOUT GOING ON TO THE OTHER PARTS OF THIS
18 AD, JUST THE BASIS OF THE SHOWING HIM BOTH KICKING THE
19 FOOTBALL AND THEN IN CIVILIAN CLOTHES SMOKING, WHAT WOULD
20 THE CONSUMER -- HOW WOULD THE CONSUMER PERCEIVE THIS AD AT
21 THE TIME?

22 A. WELL, LIKE PREVIOUS ADS, IT WOULD INDICATE THAT
23 IF SMOKING WAS APPROPRIATE, AN ACTIVITY COMPATIBLE WITH
24 BEING A PROFESSIONAL ATHLETE, IT WAS PROBABLY COMPATIBLE
25 WITH BEING AN AVERAGE CITIZEN.

26 I THINK THERE'S MORE GOING ON IN THIS AD THAN IN
27 THE PREVIOUS EXAMPLES WE SAW.

28 Q. OKAY. AND WHAT DO YOU MEAN BY THAT?

2101 1 A. WELL, THE ILLUSTRATION ON THE RIGHT-HAND PICTURE
2 WITH THE KIND OF CUTAWAY CHART, AND THE REFERENCE TO "20,000
3 FILTERS" UP THERE, AND THEN SIMILAR ILLUSTRATIONS ALONG THE
4 BOTTOM, COMPARING THE VICEROY ADVERTISED BRAND TO UNNAMED
5 BRANDS B AND C AND SIMILAR CUTAWAYS, PRESENTS A KIND OF
6 SCIENTIFIC -- APPARENTLY SCIENTIFIC DEMONSTRATION OF THE
7 FILTER'S SUPERIORITY.

8 THIS WAS A TIME WHEN FILTERS WERE FAIRLY NEW IN
9 THE MARKETPLACE AND WERE BEING SOLD TO THE PUBLIC AS A
10 TECHNOLOGICAL SOLUTION TO THE HEALTH CONCERNs.

11 Q. AND WHEN YOU SAY "TECHNOLOGICAL SOLUTION TO THE
12 HEALTH CONCERNs," WHAT HEALTH CONCERNs?

13 A. WELL, THE EARLY 1950S, 1953, IN PARTICULAR '52
14 AND '53, THERE HAD BEEN SOME OF THE EARLY STUDIES OF MEDICAL
15 RESEARCH THAT STARTED TO LEAK INTO THE POPULAR PRESS,

16 PARTICULARLY THROUGH READER'S DIGEST, CREATING WHAT THE
17 INDUSTRY CALLED A HEALTH SCARE.

18 AND SO TO PROVIDE REASSURANCE, FILTERS WERE
19 INTRODUCED. I MEAN, THAT WAS JUST ONE OF SEVERAL
20 STRATEGIES, BUT THE INTRODUCTION OF FILTERS WAS PART OF THE
21 OVERALL STRATEGY OF RESPONSE.

22 Q. AND WAS THIS WHAT'S COME TO BE KNOWN AS A FRANK
23 STATEMENT TO CIGARETTE SMOKERS, PLAINTIFFS' EXHIBIT 363
24 (INDICATING), WAS THAT ALSO A RESPONSE BY THE TOBACCO
25 COMPANIES TO THE HEALTH SCARE OF THE EARLY 1950S?

26 MR. BARRON: EXCUSE ME, YOUR HONOR. I THINK YOU
27 RULED ON THAT KIND OF A QUESTION.

28 THE COURT: I HAVE. SUSTAINED.

2102 1 MS. CHABER: Q. WAS THE FRANK STATEMENT TO
2 CIGARETTE SMOKERS AN ADVERTISEMENT?

3 A. YES.

4 Q. AND APPROXIMATELY HOW MANY -- FIRST OF ALL, WHAT
5 DID IT APPEAR IN, WHAT MEDIUM?

6 A. NEWSPAPERS, FULL-PAGE ADS, TYPICALLY FULL-PAGE,
7 IN MAJOR METROPOLITAN DAILIES, NEWSPAPERS ACROSS THE NATION.

8 Q. DO YOU KNOW APPROXIMATELY HOW MANY CITIES OR HOW
9 MANY PAPERS?

10 A. I'M NOT SURE OF THE CITIES. I THINK IT WAS 454
11 PAPERS, SOMETHING LIKE THAT. JUST SHY OF 500 PAPERS.

12 Q. AND DO YOU KNOW HOW MUCH WAS SPENT ON THE
13 ADVERTISING BUDGET FOR THE FRANK STATEMENT?

14 A. YES. \$250,000, A QUARTER OF A MILLION DOLLARS,
15 IN ESSENTIALLY 24 HOURS.

16 I MEAN, ALL OF THE ADS APPEARED IN A DAY OR SO.

17 Q. AND THAT WAS IN JANUARY OF 1954?

18 A. THAT'S CORRECT.

19 Q. AND IN 19 -- WELL, I GUESS I CAN'T SAY 1999
20 DOLLARS ANYMORE. IN 2000 DOLLARS, CAN YOU GIVE US AN IDEA
21 OF WHAT WOULD BE COMPARABLE?

22 MR. BARRON: OBJECTION, YOUR HONOR. LACK OF
23 FOUNDATION.

24 THE COURT: YOU MEAN IN TERMS OF DOLLARS?

25 MS. CHABER: IN TERMS OF DOLLARS OR IN TERMS OF
26 ADVERTISING.

27 Q. WHAT WOULD BE THE EQUIVALENT IN TERMS OF AN
28 ADVERTISING BUDGET?

2103 1 THE COURT: SUSTAINED.
2 MS. CHABER: Q. WHAT COULD YOU BUY FOR \$250,000
3 IN CURRENT TIMES?

4 THE COURT: TODAY?

5 MS. CHABER: ACTUALLY, I ASKED THAT BACKWARDS.

6 THE COURT: HOW WOULD YOU ASK IT IF YOU WERE TO
7 ASK IT FORWARD?

8 MS. CHABER: WELL, IT DEPENDS WHERE YOU'RE
9 STANDING WHETHER IT'S FORWARD OR BACKWARDS.

10 I THINK SOMEBODY SAID THAT IN "ALICE IN
11 WONDERLAND."

12 Q. DOCTOR, TODAY, AN AD, FOR EXAMPLE, A TWO OR
13 THREE-MINUTE AD -- OR SECOND AD ON THE SUPERBOWL,
14 APPROXIMATELY HOW MUCH WOULD THAT COST?

15 MR. BARRON: OBJECTION. RELEVANCY.

16 THE COURT: SUSTAINED.

17 MS. CHABER: Q. IN 1994, WAS THERE A LOT OF
18 MONEY TO SPEND ON ADVERTISING?

19 MR. ESCHER: OBJECTION. I THINK YOU MISSPOKE.
20 YOU SAID "1994."

21 MS. CHABER: EXCUSE ME. YOU'RE CORRECT.
22 THANK YOU, MR. ESCHER.
23 MR. ESCHER: OBJECTION. VAGUE, WITH THAT
24 CORRECTION.
25 MS. CHABER: IN 1954.
26 THE COURT: IT IS VAGUE.
27 YOU NEED TO REWORD IT. YOU NEED TO DO MORE THAN
28 CHANGE THE DATE.
2104 MS. CHABER: Q. IN 1954, \$250,000 FOR A
2 24-HOUR ADVERTISING CAMPAIGN, HOW WOULD YOU RATE THAT IN
3 TERMS OF BUYING; HIGH, LOW, MEDIUM?
4 A. IT WAS AWESOME, AN UNPRECEDENTED AMOUNT OF MONEY
5 TO SPEND ON ADVOCACY ADVERTISEMENTS LIKE THAT.
6 Q. WHAT'S THE NEXT ADVERTISEMENT THAT YOU HAVE WITH
7 A CELEBRITY ENDORSEMENT BY TIME?
8 A. 1867.
9 Q. AND APPROXIMATELY WHAT YEAR IS THAT?
10 A. 1961.
11 Q. DO YOU KNOW WHERE THIS AD APPEARED, OR WHAT TYPE
12 OF MEDIUM?
13 A. I DO. THIS APPEARED IN LIFE MAGAZINE.
14 MS. CHABER: OKAY. AND I'D MOVE IT IN EVIDENCE
15 AND DISPLAY IT TO THE JURY.
16 THE COURT: 1867?
17 MS. CHABER: YES.
18 THE COURT: OKAY. 1867 IS RECEIVED.
19 (DOCUMENT MORE PARTICULARLY
20 LISTED IN THE INDEX RECEIVED
21 IN EVIDENCE AS PLAINTIFFS'
22 EXHIBIT # 1867)
23 MS. CHABER: Q. 1961, IS WHAT YOU SAID?
24 A. 1961.
25 Q. THIS IS A MARLBORO ADVERTISEMENT?
26 A. YES, IT IS, BEFORE THE DAYS OF THE COWBOY
27 CAMPAIGN.
28 Q. AND WHO IS ADVERTISING -- I REALIZE IT'S NOT THE
2105 BEST COPY -- WHO IS ADVERTISING THE MARLBORO IN THIS AD?
1 A. A PROFESSIONAL BASEBALL STAR BY THE NAME OF
2 MINNIE MINOSO. MINNIE, BECAUSE HE WAS QUITE SHORT.
3 Q. AND WAS HE FAMOUS IN HIS TIME?
4 A. HE WAS AN ALL-STAR PLAYER.
5 Q. AND IN 1961, WHAT WOULD THE -- HOW WOULD THE
6 CONSUMER PERCEIVE THIS ADVERTISEMENT?
7 A. THAT SMOKING WAS OKAY WITH BEING A PROFESSIONAL
8 ATHLETE.
9 Q. WHAT'S THE NEXT ONE IN TIME?
10 A. 1871.
11 Q. OKAY. AND WHAT YEAR IS THAT?
12 A. 1962.
13 Q. AND DID THIS APPEAR -- DO YOU KNOW WHERE THIS
14 APPEARED?
15 A. I BELIEVE THIS WAS ALSO LIFE MAGAZINE.
16 MS. CHABER: I MOVE IT INTO EVIDENCE AND TO SHOW
17 IT.
18 THE COURT: 1871 IS RECEIVED.
19 (DOCUMENT MORE PARTICULARLY
20 LISTED IN THE INDEX RECEIVED
21 IN EVIDENCE AS PLAINTIFFS'
22 EXHIBIT # 1871)
23 MS. CHABER: Q. NOT THE BEST PICTURE, BUT
24 THAT'S MICKEY MANTLE?
25

26 A. IT IS.
27 Q. AND HE WAS A NEW YORK YANKEE?
28 A. HE WAS.
2106
1 Q. AND A FAMOUS ONE?
2 A. FAMOUS, PARTICULARLY FOR HIS HOME RUN HITTING.
3 Q. OKAY. AND IN THIS TIME PERIOD, HE WAS ACTUALLY
4 AN ATHLETE AND PLAYING SPORTS AT THE TIME OF THIS AD?
5 A. HE WAS. HE WAS AN ACTIVE ATHLETE, YES.
6 Q. HE'S HOLDING A VICEROY CIGARETTE?
7 A. HE IS.
8 Q. AND WHAT WOULD THE CONSUMER -- HOW WOULD THE
9 CONSUMER PERCEIVE THIS AD AT THE TIME?
10 A. THAT IF A PROFESSIONAL ATHLETE CAN SMOKE, SO CAN
11 EVERYBODY.
12 Q. WHAT'S THE NEXT ONE IN TIME?
13 A. THE NEXT ONE I HAVE IS -- LET ME SEE -- 1872.
14 Q. OKAY. WHAT YEAR IS THAT?
15 A. SAME YEAR, 1962.
16 Q. AND IN 1962, DO YOU KNOW WHERE THIS APPEARED?
17 A. I BELIEVE IT'S FROM LIFE MAGAZINE. I DON'T HAVE
18 CERTAIN RECALL ON THAT.
19 IT'S CERTAINLY FROM A CONSUMER MAGAZINE, A MASS
20 CIRCULATION CONSUMER MAGAZINE.
21 Q. AGAIN, THIS WOULDN'T BE AN ADVERTISEMENT THAT
22 WOULD BE THE TYPE THAT WOULD APPEAR IN TRADE JOURNALS?
23 A. NO, IT WAS NOT A TRADE AD.
24 MS. CHABER: I'D MOVE IT INTO EVIDENCE.
25 THE COURT: 1872 IS RECEIVED.
26 (DOCUMENT MORE PARTICULARLY
27 LISTED IN THE INDEX RECEIVED
28 IN EVIDENCE AS PLAINTIFFS'
2107
1 EXHIBIT # 1872)
2 MS. CHABER: SHOW IT TO THE JURY?
3 THE COURT: YES.
4 MS. CHABER: Q. NOW, AT THE TOP, IT'S VERY
5 HARD TO READ, BUT THERE'S A PICTURE OF THE HANDS, AND I TAKE
6 IT HE'S HOLDING A BAT IN HIS HANDS?
7 A. YES.
8 Q. CAN YOU READ WHAT IT SAYS?
9 A. NO. MY COPY IS EVEN MORE WASHED OUT THAN THAT.
10 Q. I THINK WHAT IT SAYS IS -- I'M SURE COUNSEL WILL
11 TELL ME IF I'M WRONG -- BUT IT SAYS "REACHING FOR THE RECORD
12 BOOK"?
13 A. YES. HE AND MICKEY MANTLE WERE IN COMPETITION
14 FOR HOME RUN HITTING.
15 Q. AND HE ALSO WAS A NEW YORK YANKEE?
16 A. YES.
17 Q. AND AGAIN, HE'S GOT AN ACTIVELY LIT CIGARETTE IN
18 HIS HAND?
19 A. HE DOES.
20 Q. YOU CAN SEE SMOKE COMING OFF THE CIGARETTE?
21 A. YOU CAN.
22 Q. AND IS THAT CHARACTERISTIC OF THE TIME?
23 A. YES, IT IS, ALTHOUGH NOT SINCE. YOU DON'T SEE
24 SMOKING CIGARETTES IN CIGARETTE ADVERTISING NOW.
25 Q. AND IT'S A CAMEL ADVERTISEMENT?
26 A. YES.
27 Q. AND THERE'S A COMMENT ABOUT "SMOKING MORE NOW BUT
28 ENJOYING IT LESS? CHANGE TO CAMEL"?
2108
1 A. YES.

2 Q. WHAT WOULD THE -- HOW WOULD THE CONSUMER PERCEIVE
3 THIS ADVERTISEMENT?

4 A. WELL, THE DOMINANT MESSAGE WOULD BE THAT IF A
5 PROFESSIONAL ATHLETE WHO IS FAMOUS, DEPENDED UPON HIS
6 PERFORMANCE AS AN ATHLETE, AND HIS INCOME, WAS SMOKING, THAT
7 IT WOULD BE OKAY FOR ANY INDIVIDUAL TO SMOKE.

8 Q. IS THERE A SUBTEXT?

9 A. WELL, THERE IS A CONTEXT, LET'S SAY; THAT IS, THE
10 "SMOKING MORE NOW BUT ENJOYING IT LESS," AT THIS POINT OF
11 HISTORY, A LOT OF PEOPLE HAD SWITCHED TO FILTERED CIGARETTES
12 AND WERE -- HAD INCREASED THE AMOUNT THEY WERE SMOKING AND
13 WERE STILL FINDING IT UNSATISFYING.

14 SO I THINK THERE'S REALLY AN INTENT HERE --

15 MR. BARRON: YOUR HONOR --

16 THE COURT: NO TESTIMONY, PLEASE, ABOUT THE
17 INTENT.

18 THE WITNESS: OKAY. I THINK --

19 MS. CHABER: Q. WHAT WOULD THE PERCEPTION BE?

20 A. CONSUMERS WHO WERE SMOKING MORE NOW AND ENJOYING
21 IT LESS MIGHT FIND ENCOURAGING -- MIGHT FIND THIS AD
22 ENCOURAGING TO REVERT TO SMOKING CAMELS.

23 Q. AND THAT LEAVES US 1886?

24 A. THAT'S CORRECT.

25 Q. AND WHAT TIME PERIOD IS THAT?

26 A. IT'S THE SAME TIME PERIOD, 1962.

27 Q. AND THIS IS TWO YEARS BEFORE THE FIRST SURGEON
28 GENERAL'S REPORT ON THE HEALTH CONSEQUENCES OF SMOKING?

2109 1 A. IT IS.

2 THE COURT: HOLD IT.

3 MS. CHABER: I'M SORRY.

4 Q. AND WHERE DID THIS AD APPEAR, IF YOU KNOW?

5 A. LIFE MAGAZINE.

6 MS. CHABER: OKAY. AND I WOULD OFFER 1886 INTO
7 EVIDENCE.

8 THE COURT: IT'S RECEIVED.

9 MS. CHABER: AND I'LL SHOW IT TO JURY.

10 (DOCUMENT MORE PARTICULARLY
11 LISTED IN THE INDEX RECEIVED
12 IN EVIDENCE AS PLAINTIFFS'
13 EXHIBIT # 1886)

14 MS. CHABER: Q. AND WE HAVE: "GET LUCKY. THE
15 TASTE TO START WITH, THE TASTE TO STAY WITH."

16 WHO IS THAT THAT IS ADVERTISING LUCKY STRIKE
17 CIGARETTES?

18 A. KATHY LEE GIFFORD'S HUSBAND, FRANK.

19 Q. HE WAS NOT MARRIED TO HER AT THE TIME?

20 A. NOT AT THE TIME. IN FACT, THERE'S A TELEVISION
21 AD IN THIS SAME CAMPAIGN WHERE HE HAS A DIFFERENT WIFE.

22 Q. AND HE WAS THEN AN ATHLETE WHO WAS ACTUALLY
23 PERFORMING SPORTS?

24 A. YES.

25 Q. AND AGAIN, HE'S SHOWN, BOTH IN ACTION AND IN
26 LIFE, CIVILIAN CLOTHES, SHALL WE SAY?

27 A. NOT JUST IN CIVILIAN CLOTHES AS A SPOKESPERSON,
28 BUT WITH A CIGARETTE; THAT IS, IN THE ACT OF ACTIVE SMOKING.

2110 1 Q. AGAIN, WOULD THE MESSAGE THAT THE CONSUMER WOULD
2 COME AWAY FROM THIS AD WITH BE SIMILAR TO WHAT YOU'VE
3 DESCRIBED FOR THE OTHERS?

4 A. YES.

5 Q. NOW, DURING THIS SAME TIME PERIOD, DR. POLLAY,
6 WAS THE MEDIUM OF TELEVISION BECOMING MORE AND MORE POPULAR

7 IN THE 1950S AND 1960S?

8 A. YES.

9 Q. AND WAS THERE ADVERTISING FOR CIGARETTES ON
10 TELEVISION?

11 A. THERE WAS A VERY LARGE AMOUNT OF IT. IN FACT,
12 THAT WAS ABOUT 10 PERCENT OVERALL OF THE INCOME FOR
13 TELEVISION NETWORKS.

14 Q. AND, YOU KNOW, TODAY, WE CAN GET -- I DON'T
15 KNOW -- 122 CHANNELS BY SATELLITE OR WHATEVER.

16 HOW MANY CHANNELS WERE AVAILABLE TO THE CONSUMER
17 BACK IN THE -- LET'S JUST TALK ABOUT THE LATE 1950S, EARLY
18 1960S?

19 A. THERE WERE THREE NATIONAL NETWORKS.

20 Q. AND THOSE WERE?

21 A. ABC -- THEY STILL SURVIVE -- ABC, CBS AND NBC.

22 Q. OKAY. AND IT WAS BEFORE REMOTE CONTROLS; RIGHT?

23 A. THAT'S CORRECT.

24 Q. HAVE YOU LOOKED AT TV ADVERTISING FOR CIGARETTES
25 TO LOOK AT THE QUANTITY OF IT?

26 A. YES, I HAVE.

27 Q. HAVE YOU LOOKED AT TV ADVERTISING FOR CIGARETTES
28 TO LOOK AT THE TIME FRAMES THAT IT APPEARED IN?

2111 A. YES, I HAVE.

1 Q. AND THE PROGRAMS THAT ADVERTISED?

2 A. YES.

3 Q. AND HAVE YOU LOOKED AT IT FOR ANY PARTICULAR YEAR
4 THAT WOULD ILLUSTRATE YOUR TESTIMONY WITH RESPECT TO WHAT
5 THE AVERAGE CONSUMER COULD SEE IF THEY HAD THEIR TELEVISION
6 ON IN THE EVENING?

7 A. YES, I HAVE, IN SOME DETAIL.

8 Q. AND WHAT YEAR?

9 A. FOR 1963.

10 MS. CHABER: OKAY. AND COUNSEL, ANY OBJECTION
11 TO ME USING THIS --

12 THE REPORTER: PLEASE REPEAT THAT.

13 MR. ESCHER: NO, BUT YOU NEED TO SAY YOUR LAST
14 STATEMENT. THE COURT REPORTER DIDN'T GET IT.

15 MS. CHABER: I WAS ASKING YOU OFF THE RECORD
16 FIRST.

17 MR. ESCHER: OKAY.

18 MR. BARRON: YOUR HONOR, WHILE SHE IS DOING
19 THAT, WE WOULD PROBABLY JUST NOTE FOR THE RECORD THAT, AS TO
20 THIS PARTICULAR EXHIBIT, THE YEAR 1963, WE WOULD OBJECT ON
21 RELEVANCE AND 352.

22 THE COURT: IF YOU ARE GOING TO DO THAT, I NEED
23 TO LOOK AT THE DOCUMENT.

24 LET ME GIVE THE JURY THE AFTERNOON RECESS. I'M
25 GOING TO HAVE TO LET YOU GO AT 4:30 TODAY, BECAUSE I HAVE
26 ANOTHER MATTER ON THE CALENDAR ANYWAY.

27 SO LET'S TAKE A 20-MINUTE RECESS NOW UNTIL 3:30.

2112 1 THEN WE'LL COME BACK FOR ONE MORE HOUR.

2 PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL
3 SEE YOU BACK AT 3:30.

4 (RECESS TAKEN FROM 3:10 TO 3:30 P.M.)

5 THE COURT: OKAY. WHERE DO WE STAND?

6 MR. BARRON: WELL, YOUR HONOR, IN LIGHT OF OUR
7 MEETING AND REPRESENTATIONS ABOUT MS. WHITELEY'S TELEVISION
8 WATCHING IN CERTAIN YEARS, I WOULD WITHDRAW MY OBJECTION TO
9 THIS CHART FOR 1963.

10 THE COURT: ALL RIGHT. AND I'LL ALLOW IT TO BE
11 WITHDRAWN SUBJECT TO A MOTION TO STRIKE, DEPENDING ON

12 WHETHER WE HEAR SUCH TESTIMONY AS HAS BEEN REPRESENTED OR
13 NOT.

14 MS. CHABER: FOR THE RECORD, THE CHART THAT WE
15 ARE TALKING ABOUT IS 1902, AND THE BLOWUP IS 1902-A.

16 AND I THINK I GAVE THE COURT A COPY.

17 THE COURT: YES.

18 MS. CHABER: Q. AND WE'LL GET TO THAT IN A
19 MOMENT. I JUST WANT TO ASK YOU ABOUT ANOTHER CATEGORY OF
20 ADS.

21 IS THERE A CATEGORY OF ADS THAT YOU WOULD CALL
22 HEALTH ADS?

23 A. YES.

24 Q. AND CAN YOU TELL US WHICH EXHIBIT NUMBERS THAT WE
25 HAVE AS EXAMPLES -- FIRST OF ALL, STRIKE THAT FOR A SECOND.

26 ACTUALLY, NOT STRIKE IT, BUT LET ME JUST JUMP
27 BACK FOR A SECOND.

28 THE CELEBRITY SPORTS ADS THAT WE LOOKED AT, ARE

2113 THOSE REPRESENTATIVE OF ADS DURING THE TIME PERIODS YOU
1 IDENTIFIED OR ARE THOSE LIKE EXCEPTIONAL ADS?

3 A. NO, THERE ARE MANY OTHERS LIKE THOSE; THAT IS, IT
4 WAS COMMON TO USE SPORTS CELEBRITIES.

5 BUT I WOULD ADMIT THAT THERE WERE OTHER NONSPORT
6 CELEBRITIES USED AS WELL.

7 Q. MOVIE STARS?

8 A. MOVIE STARS PARTICULARLY, YES.

9 Q. NOW, JUMPING BACK TO WHERE I WAS ON THESE HEALTH
10 ADS.

11 WOULD YOU IDENTIFY THE NUMBERS OF THE EXHIBITS
12 THAT WE'VE PICKED AS HEALTH ADS.

13 A. YES. 1874, 1875, 1876, 1878, AND 1880 ARE THE
14 ONES I HAVE IN FRONT OF ME.

15 Q. OKAY. AND WERE ALL OF THOSE ADS, THE NUMBERS
16 THAT WE JUST IDENTIFIED, WERE THOSE ALL PRIOR TO 1969?

17 A. THEY WERE.

18 Q. OKAY. AND WERE THESE ALL ADS THAT APPEARED IN
19 COMMERCIAL PUBLICATIONS; THAT IS, PUBLICATIONS INTENDED FOR
20 A CONSUMER AUDIENCE?

21 A. THEY WERE.

22 MS. CHABER: 1874 IS ALREADY IN EVIDENCE.

23 I WOULD MOVE 1875 IN EVIDENCE, 1876, 1878 AND
24 1880.

25 AND WHEN WE DISPLAY THEM, TO THE EXTENT WE CAN,
26 WE'LL POINT OUT THE YEARS.

27 THE COURT: OKAY. THE STANDING OBJECTION
28 APPLIES.

2114 1 AND THE COURT OVERRULES THAT, AND RECEIVES 1875,
2 1876, 1878 AND 1880.

3 (DOCUMENTS MORE PARTICULARLY
4 LISTED IN THE INDEX RECEIVED
5 IN EVIDENCE AS PLAINTIFFS'
6 EXHIBIT #S 1875-1876, 1878 & 1880)

7 MS. CHABER: Q. IF WE COULD HAVE THE LIGHTS,
8 PLEASE.

9 1874 IN EVIDENCE, PREVIOUSLY MARKED, CAN YOU --
10 WHAT IS THIS AN AD FOR?

11 A. IT'S AN AD FOR CAMEL CIGARETTES.

12 Q. AND DO YOU KNOW THE APPROXIMATE TIME PERIOD OF
13 THIS AD?

14 A. I CAN ONLY APPROXIMATE IT, BECAUSE THIS CAMPAIGN
15 RAN FOR SEVERAL YEARS. SO IT'S FROM THE PERIOD 1946 TO
16 ABOUT 1950, '51.

17 Q. OKAY. AND THE STATEMENT: "ACCORDING TO A RECENT
18 NATIONWIDE SURVEY, MORE DOCTORS SMOKE CAMELS THAN ANY OTHER
19 CIGARETTE"; DO YOU KNOW HOW THAT WAS VERIFIED?
20

21 A. I KNOW FROM SOME OF THE DOCUMENTS IN THE HILL &
22 KNOWLTON PAPERS WHAT THEY THOUGHT HAD BEEN THE PROCEDURE FOR
23 GENERATING THAT DATA.
24

25 Q. AND WE ARE GOING TO TALK ABOUT THE HILL &
26 KNOWLTON PAPERS LATER.
27

28 BUT JUST BRIEFLY, WHO WERE HILL & KNOWLTON, OR
WHAT WAS HILL & KNOWLTON?

29 A. WELL, IT'S STILL HILL & KNOWLTON.
30

2115 Q. IT STILL IS.

1 A. A PUBLIC RELATIONS FIRM, A VERY MAJOR PUBLIC
2 RELATIONS FIRM, AT THE TIME, THE LARGEST IN THE WORLD.
3

4 Q. AND WAS THAT A PUBLIC RELATIONS FIRM THAT WAS
5 HIRED BY THE CIGARETTE COMPANIES?
6

7 A. YES. THEY WERE THE ONES RESPONSIBLE FOR THE
8 FRANK STATEMENT DEPLOYMENT.
9

10 Q. AND WITH RESPECT TO HOW THIS WAS VERIFIED, THAT
11 "MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE," HOW
12 WAS IT?
13

14 A. THEY BELIEVED IT WAS BASED UPON A SURVEY DONE AT
15 A MEDICAL CONVENTION, ASKING DOCTORS AT THE END OF THE
16 CONVENTION WHAT PACKS OF CIGARETTES THEY HAD IN THEIR
17 POCKET.
18

19 Q. AND PRESUMABLY, THE DOCTORS THAT HAD CIGARETTES
20 IN THEIR POCKETS WERE SMOKERS?
21

22 A. YES.
23

24 Q. DURING THIS TIME PERIOD WHEN THIS AD RAN, WAS
25 THAT A TIME PERIOD THAT DOCTORS WERE SMOKING?
26

27 A. YES, DEFINITELY.
28

29 Q. AND IS THE 1950'S A TIME PERIOD WHEN DOCTORS WERE
30 SMOKING?
31

32 A. YES.
33

34 MR. ESCHER: Q. OBJECTION. VAGUE, YOUR
35 HONOR. SOME DOCTORS?
36

37 THE COURT: YES, IT'S VAGUE AS TO WHETHER YOU
38 MEAN SOME DOCTORS, ALL DOCTORS OR MANY OR FEW.
39

40 I'LL SUSTAIN, AND STRIKE THE ANSWER.
41

42 MS. CHABER: OKAY.
43

2116 Q. CAN YOU GIVE US AN IDEA, THE APPROXIMATE
1 DESCRIPTION OF THE NUMBERS OF DOCTORS THAT WERE SMOKING IN
2 THE 1950S?
3

4 MR. ESCHER: OBJECTION. LACK OF FOUNDATION,
5 YOUR HONOR.
6

7 THE COURT: SUSTAINED. I DON'T KNOW WHETHER
8 THIS WITNESS HAS A FOUNDATION FOR THAT. IT HASN'T BEEN
9 SHOWN YET.
10

11 MS. CHABER: Q. DR. POLLAY, HAVE YOU LOOKED AT
12 THE ISSUE OF WHO -- WHAT GROUPS OF PEOPLE WERE SMOKING
13 CIGARETTES AT WHAT POINTS IN TIME?
14

15 A. YES.
16

17 Q. IS THAT PART OF THE WORK AND THE RESEARCH AND THE
18 STUDY THAT YOU HAVE DONE OVER THE YEARS?
19

20 A. YES.
21

22 Q. AND DID YOU LOOK AT THE ISSUE OF WHETHER AND WHEN
23 DOCTORS WERE A GROUP THAT WAS MORE THAN INFREQUENT OR
24 OCCASIONALLY SMOKERS?
25

26 A. YES.
27

28 Q. AND CAN YOU GIVE US AN IDEA WHAT THE TIME FRAME
29 WAS WHEN DOCTORS WERE MORE THAN AN OCCASIONAL DOCTOR
30

22 SMOKING?

23 MR. ESCHER: OBJECTION. VAGUE, YOUR HONOR.

24 THE COURT: YES. "MORE THAN AN OCCASIONAL

25 DOCTOR."

26 SUSTAINED.

27 MS. CHABER: Q. CAN YOU GIVE US AN IDEA OF

28 WHETHER THERE WAS A POINT IN TIME THE MAJORITY OF DOCTORS

2117 WERE SMOKING?

1 A. YES, I CAN.

2 Q. AND WHAT TIME FRAME WOULD THAT BE?

3 A. THROUGHOUT THE '40S AND '50S, AND INTO THE EARLY

4 '60S.

5 Q. AND IN FACT, ONE OF THE BIGGEST STUDIES THAT WAS

6 DONE IN ENGLAND IN THE EARLY 1950S WAS THE BRITISH DOCTOR

7 STUDY?

8 A. THAT'S CORRECT. THE DOCTORS WERE THE SUBJECTS OF

9 THE STUDY.

10 Q. AND THESE WERE SMOKING DOCTORS?

11 A. THAT'S CORRECT.

12 Q. AND THIS AD, 1874, GOES AND IDENTIFIES EVERY

13 DOCTOR IN PRIVATE PRACTICE WAS ASKED, AND IDENTIFIED FAMILY

14 PHYSICIANS, SURGEONS, SPECIALISTS, DOCTORS IN EVERY BRANCH

15 OF MEDICINE.

16 IS THIS WHAT YOU'RE TALKING ABOUT IN TERMS OF THE

17 DOCTORS AS A CATEGORY SMOKING?

18 A. YES.

19 Q. OKAY. AND WE TALKED BEFORE ABOUT EXPLICIT

20 CONTENT AND IMPLICIT CONTENT.

21 WHAT DOES THIS AD HAVE?

22 A. WELL, THAT'S A SPECTRUM OF -- IN MY VIEW, THIS IS

23 A FAIRLY EXPLICIT AD; THAT IS, THE FACT OF DOCTORS SMOKING

24 IS ESSENTIALLY A HEALTH PREMISE. THAT IS, IF DOCTORS ARE

25 SMOKING, PRESUMABLY DOCTORS DON'T DO THINGS THAT ARE

26 DESTRUCTIVE OF THEIR OWN HEALTH.

27 Q. AND IN FACT, THE PICTURES ARE ACTUALLY SHOWING

2118 DOCTORS IN THE COURSE OF TREATING PATIENTS?

1 A. YES. SMOKING WHILE PRACTICING.

2 Q. AND WHILE DOING SCIENTIFIC RESEARCH WITH A

3 MICROSCOPE SHOWING?

4 A. YES.

5 Q. AND I GUESS THIS GUY IS LOOKING AT A THERMOMETER

6 IS WHAT IT KIND OF LOOKS LIKE?

7 A. YES. I DON'T HAVE AN EXAMPLE. I'M HAVING TO

8 READ IT OFF THE SCREEN.

9 BUT YES, IT SEEMS TO BE SOMETHING LIKE THAT.

10 Q. AND THIS IS AN R.J. REYNOLDS AD?

11 A. IT IS.

12 Q. AND THERE'S A LOT OF TEXT AS WELL IN THIS AD.

13 CAN YOU JUST ORIENT US?

14 WHEN A CONSUMER SEES AN ADD LIKE THIS, ARE THERE

15 CERTAIN PLACES THAT PEOPLE TEND TO LOOK FIRST, OR HOW DOES

16 THAT WORK, BECAUSE THERE'S A LOT GOING ON HERE?

17 MR. ESCHER: OBJECTION. VAGUE. LACK OF

18 FOUNDATION, YOUR HONOR.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES. IN ADVERTISING LAYOUT, THERE

21 ARE VARIOUS PRINCIPLES ABOUT THE OPTICAL CENTER OF THE AD,

22 WHICH IS ACTUALLY ABOVE THE LITERAL CENTER OF THE AD.

23 THE SIZE OF THE TYPE WOULD DETERMINE WHAT ARE THE

24 HEADLINES VERSUS WHAT ARE THE SUBHEADS OR THE BODY COPY;

25 THAT IS, THE FINE PRINT.

27 AND WE KNOW THAT MOST OF THE FINE PRINT IS NOT
28 READ BY THE AVERAGE CONSUMER; THAT IS, MOST CONSUMERS READ
2119
1 AN AD BY LOOKING AT THE HEADLINE AND TAKING IN THE IMAGE AND
2 NOT MUCH MORE.

3 SO THAT IT'S ONLY MAYBE 10 PERCENT OF THE
4 POPULATION THAT WOULD TAKE THE TIME TO READ THE FINE PRINT
5 OF AN AD.

6 MS. CHABER: Q. OKAY. AND THE PART OF THE
7 POPULATION THAT WOULD READ THE FINE PRINT OF THIS AD -- IS
8 YOUR COPY LEGIBLE, DOCTOR?

9 A. I DON'T HAVE A COPY IN FRONT OF ME.

10 Q. WELL, THEN, I GUESS IT'S NOT VERY LEGIBLE.

11 LET ME SEE IF I CAN HELP YOU. POINTING OVER HERE
12 (INDICATING), "THE T-ZONE TEST WILL TELL YOU." WAS THAT A
13 PART OF CAMEL ADVERTISING FOR ANY TIME PERIOD?

14 A. IT WAS FOR SEVERAL YEARS. AT FIRST, IT WAS A
15 SUBORDINATE PART OF THIS CAMPAIGN. THEN IT ELEVATED TO BE A
16 MORE CENTRAL PART AS THE CAMPAIGN EVOLVED, YOU KNOW, "TEST
17 YOUR CIGARETTE IN THE T-ZONE," THE THROAT.

18 Q. WHEN I SAY "FINE PRINT," WE NEED THE GLASSES.

19 IT SAYS: "THE 'T-ZONE,' T FOR TASTE AND T FOR
20 THROAT IS YOUR OWN LABORATORY, YOUR PROVING GROUND FOR ANY
21 CIGARETTE, FOR ONLY YOUR TASTE AND YOUR THROAT CAN DECIDE
22 WHICH CIGARETTE TASTES BEST TO YOU AND HOW IT AFFECTS YOUR
23 THROAT. ON THE BASIS OF THE EXPERIENCE OF MANY MILLIONS OF
24 SMOKERS, WE BELIEVE CAMELS WILL SUIT YOUR' T-ZONE TO A T."

25 WHAT IS THE MESSAGE THAT THE CONSUMER WOULD GET
26 FROM THAT?

27 A. THAT THIS PARTICULAR BRAND OF CIGARETTES WOULD
28 NOT BE IRRITATING TO THE THROAT, THE NOTION BEING THAT
2120

1 THROAT IRRITATION MIGHT BE SYMPTOMATIC OF A MEDICAL HARM
2 THAT THE CIGARETTES WERE CAUSING, AND THIS WOULD LACK THAT
3 HARM.

4 Q. 1875. DO YOU HAVE A COPY OF THAT ONE UP THERE?

5 A. I DO.

6 Q. AND WHAT TIME PERIOD IS THIS IN?

7 A. THIS IS 1948 OR 1949. I BELIEVE '49.

8 Q. OKAY. AND THIS IS A CIGARETTE, EMBASSY
9 CIGARETTES?

10 A. YOU NEED TO PULL IT DOWN (REFERRING TO SCREEN).
11 THERE YOU GO.

12 Q. DO YOU KNOW WHO MANUFACTURED EMBASSY?

13 A. I DON'T. ACTUALLY, I DON'T RECALL THE
14 MANUFACTURER.

15 Q. THERE WERE SOME BRANDS THAT HAVE COME AND GONE?

16 A. YES. AND THIS IS ONE. I DON'T EVEN THINK THIS
17 SURVIVED OUT OF THE '50S.

18 Q. IT SAYS: "INHALE TO YOUR HEART'S CONTENT"?

19 A. YES.

20 Q. AND WHAT'S THE MESSAGE THE CONSUMER WOULD COME
21 AWAY FROM THAT WITH?

22 A. THE MESSAGE FROM THAT HEADLINE WOULD BE, YOU
23 COULD RELAX AND ENJOY THE CIGARETTE, FIND IT SATISFYING
24 WITHOUT THE NEED FOR ANY ANXIETY OR CONCERN.

25 Q. AND THE VISUAL IMAGE; WHAT WOULD THE CONSUMER
26 COME AWAY WITH FROM THE VISUAL IMAGE?

27 A. I THINK THE VISUAL IMAGE IS MORE ONE OF GLAMOR
28 RATHER THAN ONE OF HEALTHFULNESS, A SUGGESTION THAT PEOPLE
2121

1 WHO ARE QUITE AFFLUENT, VERY WELL DRESSED, WITH A LOT OF
2 JEWELS, A FANCY STRAPLESS GOWN AND GLOVES AND SO ON, ARE

3 SMOKING THIS BRAND.

4 Q. SOPHISTICATION?

5 A. SOPHISTICATION, GLAMOR, AFFLUENCE.

6 Q. UNLIKE ALL THE OTHER SPORTS ADS THAT WE JUST
7 LOOKED AT, THIS HAS A WOMAN AT THE CENTER?

8 A. YES, IT DOES.

9 Q. AND AT THIS TIME PERIOD, WERE WOMEN BEGINNING TO
10 SMOKE MORE FREQUENTLY?

11 MR. ESCHER: OBJECTION. VAGUE. LACK OF
12 FOUNDATION.

13 THE COURT: WHEN AND WHERE?

14 MS. CHABER: Q. IN THE UNITED STATES, WERE
15 WOMEN BEGINNING TO SMOKE MORE FREQUENTLY THAN THEY HAD IN
16 PREVIOUS TIME PERIODS?

17 THE COURT: I'LL OVERRULE THE OBJECTION.

18 THE WITNESS: YES. SMOKING AMONG WOMEN WAS
19 STILL ON THE INCREASE. IT HAD BEEN INCREASING FOR SOME
20 TIME, BUT IT INCREASED THROUGHOUT THE WAR INTO THE POSTWAR
21 PERIOD. AND THEY WERE, CONSISTENT WITH THIS ADVERTISEMENT,
22 AMONG THE PIONEERS IN SWITCHING OVER TO FILTERS.

23 MS. CHABER: Q. AND 1876.

24 THIS IS AN ADVERTISEMENT FOR KENT?

25 A. YES.

26 Q. AND WHAT IS THE HEALTH MESSAGE THE CONSUMER WOULD
27 GET FROM THIS AD?

28 A. THIS IS THE LAUNCH CAMPAIGN FOR KENT, WHICH

2122 1 CONVEYED AT LEAST THE HEALTH IMPLICATION THAT THE AMERICAN
2 MEDICAL ASSOCIATION --

3 MR. BARRON: EXCUSE ME, YOUR HONOR. THE DATE?

4 MS. CHABER: DID I MISS THE DATE?

5 MR. BARRON: YOU JUST MISSED THE DATE.

6 THE WITNESS: 1953. 1953.

7 MR. BARRON: THANK YOU.

8 THE COURT: OKAY. A FAIR INTERRUPTION.

9 MS. CHABER: Q. I THINK WE ESTABLISHED THAT
10 ALL OF THESE WERE ONES THAT WERE IN CONSUMER MAGAZINES?

11 A. THAT'S CORRECT. THIS PARTICULAR CAMPAIGN WOULD
12 HAVE RUN IN BOTH MAGAZINES AND NEWSPAPERS. THIS WAS THE
13 LARGEST PRODUCT LAUNCH IN HISTORY AT THE TIME. IT WAS
14 BROUGHT OUT IN THE EARLY 1950S.

15 Q. AND IN FACT, DID THESE KENT ADS, SIMILAR ADS,
16 APPEAR IN MEDICAL JOURNALS?

17 A. THEY DID, AND ON TELEVISION AS WELL.

18 Q. OKAY. I THINK YOU WERE EXPLAINING WHAT HEALTH
19 IMPLICATIONS THE CONSUMER WOULD COME AWAY WITH.

20 A. YES. THE TEXT AT THE TOP, PARTICULARLY THE PART
21 THAT'S IN SLIGHTLY BOLDER LETTERS, SAYS: "THE AMERICAN
22 MEDICAL ASSOCIATION TESTS PROVE THE MOST EFFECTIVE FILTER IS
23 USED BY KENT."

24 SO IT'S A PRODUCT SUPERIORITY CLAIM BASED UPON AN
25 APPARENT ENDORSEMENT OF THE AMERICAN MEDICAL ASSOCIATION.

26 Q. IN FACT, WAS THIS THE KENT MICRONITE FILTER THAT
27 HAD ASBESTOS IN IT?

28 A. IT WAS.

2123 1 Q. AND WERE THERE OTHER HEALTH REPRESENTATIONS THAT
2 WERE MADE IN THIS AD?

3 A. YES. THE GENERAL THEME OF THE WHOLE CAMPAIGN WAS
4 THAT IT WAS OFFERING PROTECTION, THE GREATEST PROTECTION OF
5 ANY FILTER CIGARETTE, THAT THE FILTER -- THE WHOLE POINT OF
6 THE FILTER WAS HEALTH PROTECTION.

7 Q. AND 1878, CAN YOU DATE THAT, APPROXIMATELY?

8 A. YES, 1958.
9 Q. OKAY. AND THAT'S A PARLIAMENT AD?
10 A. YES, IT IS.
11 Q. WHO MAKES PARLIAMENT?
12 A. PHILIP MORRIS.
13 Q. AND WHAT'S THE HEALTH IMPLICATION OF THIS AD THAT
14 THE CONSUMER WOULD COME AWAY WITH?
15 A. THIS IS ANOTHER EXAMPLE OF IMPLIED ENDORSEMENT
16 HERE. IT LOOKS LIKE IT MEETS SOME GOVERNMENT TESTING
17 BECAUSE OF THE SEAL AND REFERENCES TO THE STANDARDS OF THE
18 UNITED STATES TESTING COMPANY.
19 Q. THAT'S NOT A GOVERNMENT COMPANY?
20 A. IT'S NOT A GOVERNMENT AGENCY. IT'S SIMPLY, YOU
21 PAY YOUR MONEY, YOU GET YOUR TEST AND GET YOUR SEAL.
22 IT'S A COMMERCIAL CONTRACT FIRM.
23 Q. LIKE THE GOOD HOUSEKEEPING SEAL OF APPROVAL?
24 A. THAT'S CORRECT. WITHOUT THE MAGAZINE OF GOOD
25 HOUSEKEEPING.
26 Q. OKAY. AND WHEN IT SAYS "NEW HI-FI FILTER,"
27 WHAT'S THE REFERENCE TO "HI-FI"?
28 A. WELL, "HI-FI" WAS THE STATE-OF-THE-ART SOUND
2124 REPRODUCTION TECHNOLOGY, HIGH FIDELITY.
1 AND WHEN IN REFERENCE TO MUSIC, THIS IS AT A TIME
2 WHEN WE DIDN'T EVEN HAVE STEREO RECORDS. THEY WERE JUST
3 BEGINNING TO COME IN. SO THAT WAS THE STATE-OF-THE-ART WAY
4 OF PLAYING RECORDS. 33 RPM RECORDS WERE JUST BEGINNING TO
5 BE A NEW MODE. THAT WAS SORT OF CUTTING-EDGE TECHNOLOGY.
6 AND THEY USED "HI-FI" IN THIS SENSE TO SUGGEST A
7 CUTTING-EDGE TECHNOLOGY FOR FILTRATION, FOR HIGH FILTRATION.
8 Q. THERE'S A LOT OF INFORMATION GIVEN, AGAIN, FOR
9 SOMEBODY WHO MIGHT READ THE FINE PRINT ABOUT WHAT HAD BEEN
10 PROVED?
11 A. YES. THERE'S THREE "PROVED, PROVED, PROVED," AND
12 WITH REFERENCE TO THE NUMBER OF FILTER TRAPS, THE MOST
13 EFFECTIVE FILTERING MATERIALS AND THE LACK OF LEAKAGE OF
14 TARS AND NICOTINE FROM FILTER TO MOUTH AND SO ON.
15 Q. AND THE NEXT ONE IS 1880?
16 A. THAT'S CORRECT.
17 Q. AND WHAT YEAR IS THAT?
18 A. 1959.
19 Q. AND THIS IS AN ADVERTISEMENT FOR VICEROY?
20 A. YES, IT IS.
21 Q. "THE MAN WHO THINKS FOR HIMSELF KNOWS"?
22 A. THAT'S CORRECT.
23 Q. YOU PUT THIS IN THE CATEGORY OF HEALTH
24 IMPLICATIONS; IS THAT CORRECT?
25 A. I DID. IT'S NOW MOVING INTO AN ERA WHERE THE
26 HEALTH MESSAGES ARE BEING COMMUNICATED IN A MORE IMPLIED
27 RATHER THAN EXPLICIT MANNER.
2125 HERE, THE PERSON BEING PORTRAYED IS A PERSON WHO
1 WORKS AT A NEWSPAPER. AND YOU CAN SEE THE NEWSPAPER'S TITLE
2 IN THE LETTERING ON THE WINDOW. IT'S ALSO ECHOED BY THE
3 NEWSPAPER BOY YOU CAN SEE BY HIS CHEEK.
4 THE GENERAL IDEA HERE WAS PORTRAYING PEOPLE WHO
5 HAD RESPONSIBLE POSITIONS THAT DEMANDED INTELLIGENCE BEING A
6 SMOKER. WE SAW IN ADS PROFESSORS SMOKING, SCIENTISTS
7 SMOKING, JUDGES SMOKING, EDITORS SMOKING.
8 SO THIS IS A SUGGESTION THAT INTELLIGENT PEOPLE
9 MAKING INTELLIGENT CHOICES WERE CHOOSING VARIOUS BRANDS AND
10 CHOOSING FILTERED PRODUCTS.
11 Q. AND WAS THAT CONSISTENT WITH THE TIME PERIOD?

13 A. YES, IT WAS.
14 Q. DID THAT REMAIN CONSISTENT UP TO AND THROUGH THE
15 1960S?
16 A. YES.
17 Q. AT THE TIME PERIOD WHEN YOU WERE TEACHING AT THE
18 UNIVERSITY OF KANSAS AND WERE A PROFESSOR, WERE YOU ALLOWED
19 TO SMOKE IN YOUR CLASSROOM?
20 A. I NOT ONLY WAS ALLOWED TO, THERE WERE ASHTRAYS
21 PROVIDED. AND I DID.
22 Q. WERE YOU THE ONLY ONE OF YOUR PEERS WHO DID THAT?
23 A. NO. AND THE STUDENTS SMOKED IN THE CLASSROOM AS
24 WELL.
25 Q. AND IN THIS AD, BEHIND THE THINKING MAN, WE HAVE
26 A VILLAGE SCENE?
27 A. YES. LOOKING OVER HIS SHOULDER, WE CAN SEE OUT
28 THROUGH THE WINDOW TO THE COURTHOUSE ACROSS THE STREET AND
2126
1 THE NEWSPAPER BOY THROWING A NEWSPAPER.
2 Q. AND THE SCHOOL BUS GOING BY?
3 A. YES.
4 Q. AND I GUESS THAT SAYS "COURTHOUSE"?
5 A. YES.
6 Q. AND WERE THESE UNUSUAL ADS FOR THE TIME PERIOD?
7 A. NO, THEY WERE NOT.
8 Q. WERE THEY REPRESENTATIVE OF OTHER SIMILAR ADS
9 THAT APPEARED REGULARLY IN CONSUMER MAGAZINES AND
10 PUBLICATIONS?
11 A. YES. AS I MENTIONED, THIS ONE HAPPENS TO SHOW AN
12 EDITOR. OTHER EXAMPLES WOULD SHOW SCIENTISTS AND PROFESSORS
13 AND JUDGES AND THE LIKE.
14 Q. WE WERE GOING TO TALK ABOUT TELEVISION AND THINGS
15 THAT WERE TV COMMERCIALS FOR CIGARETTES DURING THE 1960S?
16 A. THAT'S RIGHT.
17 Q. I BELIEVE YOU SAID YOU HAD ANALYZED THIS ISSUE
18 AND HAD RESEARCHED AND WRITTEN AND TAUGHT ABOUT ISSUES OF TV
19 ADVERTISING OF CIGARETTE SMOKING; IS THAT CORRECT?
20 A. THAT'S CORRECT. I HAD ACCESS TO A GREAT DEAL OF
21 DATA FOR 1963.
22 Q. IN 1963, I THINK YOU HAD ALREADY INDICATED THAT
23 THERE WERE THREE MAJOR STATIONS?
24 A. THREE NATIONAL NETWORKS; ABC, CBS AND NBC.
25 Q. AND IN ANALYZING 1963 -- FIRST OF ALL, WHAT DID
26 YOU DO?
27 A. WELL, THE DATA I HAD AVAILABLE TO ME WAS MATERIAL
28 THAT I FOUND IN THE FEDERAL TRADE COMMISSION'S LIBRARIES AND
2127
1 ARCHIVES.
2 AND IT WAS A DETAILED LISTING OF ALL OF THE SHOWS
3 ADVERTISED BY THE TOBACCO FIRMS AND ALL OF THE AUDIENCE
4 CHARACTERISTICS OF THOSE SHOWS.
5 SO I DID A NUMBER OF THINGS TO IDENTIFY THE
6 SCHEDULING; THAT IS, TO LOOK AT THE PATTERN OF HOW THE SHOWS
7 APPEARED OVER TIME ACROSS THE WEEK, ACROSS THE DAYS OF THE
8 PRIME TIME, ACROSS THE DAYS OF THE WEEK, ACROSS THE HOURS OF
9 PRIME TIME.
10 AND I THEN LOOKED AT THE AUDIENCE
11 CHARACTERISTICS, AND LOOKED AT HOW MUCH MONEY WAS BEING
12 SPENT AND HOW MUCH TELEVISION WAS CAPTURING OF THEIR TOTAL
13 PROMOTIONAL SPENDING AND THINGS LIKE THAT.
14 SO I TRIED TO UNDERSTAND THIS DATA, AND IN THE
15 LARGER CONTEXT OF THE ADVERTISING ACTIVITY OF THAT YEAR.
16 MS. CHABER: OKAY. AND PLAINTIFFS' EXHIBIT 1902
17 AND 1902.01, WHICH IS THE BLOWUP OF IT, I WOULD SEEK TO USE

18 AT THIS POINT FOR DEMONSTRATIVE PURPOSES.
19 THE COURT: IT DOESN'T MATTER TO ME, BUT THE WAY
20 I SAW IT, 1902 HAD A CHANGE IN IT? I DON'T CARE.
21 MS. CHABER: SOMEBODY CHANGED IT ON ME.
22 THE COURT: I DON'T CARE WHAT IT IS.
23 MS. CHABER: OKAY.
24 THE COURT: WHAT IS IT, 1902?
25 MS. CHABER: LET'S MAKE IT 1902-A AND I WILL FIX
26 IT ON THE BOARD.
27 THE COURT: OKAY.
28 MS. CHABER: Q. DR. POLLAY, WOULD IT HELP, FOR
2128

1 THE JURY TO UNDERSTAND THIS, FOR YOU TO ILLUSTRATE YOUR
2 TESTIMONY WITH RESPECT TO TV ADVERTISING BY CIGARETTE
3 COMPANIES? RIGHT NOW, WE'RE SPECIFICALLY TALKING ABOUT
4 1963.

5 A. YES, DEFINITELY.

6 Q. WOULD YOU MIND STEPPING DOWN HERE.

7 AND MAYBE, IF YOU DON'T MIND BEING BLOCKED, YOUR
8 HONOR, I CAN MOVE THIS IN FRONT OF THE JURY, CLOSER TO THE
9 JURY.

10 THE COURT: I DON'T MIND BEING BLOCKED. YOU MAY
11 NEED TO CLIP THAT ON.

12 (DISCUSSION OFF THE RECORD)

13 MS. CHABER: Q. FIRST OF ALL, CAN YOU
14 ILLUSTRATE FOR US HOW -- I GUESS, FIRST EXPLAIN WHAT THIS
15 CHART IS.

16 JUROR NO. 6: LIGHTS.

17 MS. CHABER: LIGHTS.

18 THE WITNESS: THESE ARE THE HALF-HOUR TIME SLOTS
19 OF WHAT'S CALLED PRIME TIME, FROM 7:30, 7:30 TO 8:00, 8:00
20 TO 8:30, 8:30 TO 9:00 AND SO ON, ALL THE WAY UP TO 11:00
21 O'CLOCK, FOR THE SEVEN DAYS OF THE WEEK. AND THEN IN EACH
22 ROW HERE, THE THREE NETWORKS.

23 SO THIS ALLOWS US TO IDENTIFY, YOU KNOW, WHERE
24 CIGARETTE ADVERTISING WAS OCCURRING, WHAT DAYS OF THE WEEK,
25 AND WHAT PATTERN THERE MIGHT HAVE BEEN TO IT, AND WAS THERE
26 A LOT OR A LITTLE, THINGS LIKE THAT.

27 MS. CHABER: Q. OKAY. AND IS THERE A WAY YOU
28 CAN ILLUSTRATE FOR US THE PATTERNS OF WHEN IT WAS
2129

1 OCCURRING? AND THEN WE'LL GET MORE SPECIFIC AS TO WHOSE
2 ADVERTISING IT WAS.

3 A. I THINK SO. BUT I THINK MAYBE IT WOULD BE BEST
4 IF WE BUILT IT UP FIRM BY FIRM.

5 Q. OKAY. WHO WAS DOING CIGARETTE ADVERTISING ON TV
6 IN THIS TIME PERIOD, 1963?

7 A. WELL, ESSENTIALLY, ALL OF THE TOBACCO FIRMS,
8 THERE BEING SIX AT THE TIME.

9 THE DEFENDANTS, PHILIP MORRIS AND R.J. REYNOLDS,
10 AND THEN THERE'S LORILLARD, LIGGETT & MYERS, BROWN &
11 WILLIAMSON AND AMERICAN TOBACCO.

12 Q. OKAY. SO WHO SHALL WE START WITH?

13 A. WELL, I HAVE GOT ALL KINDS OF COLOR THINGS.

14 LET'S START WITH PHILIP MORRIS, SINCE I'VE GOT RED OR PINK
15 IN MY HAND. IT'S NOT EXACTLY MARLBORO RED, BUT IT WILL
16 BE --

17 MR. BARRON: WE'LL ACCEPT IT.

18 THE WITNESS: I'LL SHADE IN THE BLOCKS THAT
19 PHILIP MORRIS WAS ADVERTISING.

20 I JUST WANT TO MAKE SURE I DO THIS RIGHT HERE,
21 BECAUSE I CAN'T ERASE ANY OF THIS.

22 (MARKING ON BOARD)

23 MS. CHABER: Q. WE HAVE TO GET INTO COLOR
24 THEORY IF YOU MESS UP ON YOUR COLORS THERE.
25 A. LET ME SEE. THERE'S ONE MORE HERE.
26 SO THAT WOULD REPRESENT PHILIP MORRIS' SCHEDULE.
27 Q. I THINK YOU ARE BLOCKING ONE OF THE JURORS.
28 A. I'M SORRY.

2130 1 Q. OKAY. AND JUST FOR THE RECORD, WE'VE GOT MONDAY,
2 CBS FROM 10:00 TO 11:00, THURSDAY; AM I READING THIS RIGHT?
3 A. THERE'S ONE I MISSED.
4 Q. OKAY.
5 A. THERE'S YET ANOTHER ONE.
6 THE RED SKELTON SHOW, TUESDAY ON CBS FROM 8:00 TO
7 9:00.
8 SO A TOTAL OF 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
9 12, 13 HALF-HOUR SLOTS.
10 Q. IS THIS TIME FRAME -- IS ANY PORTION OF THIS TIME
11 FRAME DESIGNATED FAMILY HOUR?
12 A. WELL, THE EARLIER IN THE EVENING, THE HIGHER THE
13 PROPORTION OF YOUNG CHILDREN THERE WOULD BE, BUT THERE WOULD
14 BE CHILDREN AT ALL HOURS.
15 I MEAN, THERE COULD BE CERTAINLY TEENAGERS AT ALL
16 HOURS. I THINK THE LATER YOU GET INTO THE EVENING, THE
17 FEWER YOUNG CHILDREN YOU HAVE, BECAUSE THEY'VE BE SENT OFF
18 TO BED, I THINK, BUT -- IN MANY FAMILIES, AT LEAST.
19 BUT WE KNOW THERE ARE LITERALLY MILLIONS OF
20 CHILDREN STILL WATCHING TELEVISION AT MIDNIGHT. SO IT'S NOT
21 A RIGID THING, YOU KNOW. IT'S JUST THE CHANGING PROPORTIONS
22 OF HOW MANY CHILDREN AND HOW MANY ADULTS WE SEE.
23 WE HAD THIS SPECIFIC DATA FOR THE NUMBER OF
24 CHILDREN FOR EACH OF THESE SHOWS.
25 Q. OKAY. WE'LL COME BACK TO THAT AFTER.
26 SO THIS HAS PHILIP MORRIS TIME SLOTS IN PINK?
27 A. YES.
28 Q. AND WHAT IS --

2131 1 A. I'LL DO THE R.J. REYNOLDS TIME SLOTS IN BLUE
2 HERE.
3 OKAY. SO THAT'S THE R.J. REYNOLDS TIME SLOTS IN
4 BLUE.
5 I THINK MAYBE IF WE HAD JUST ONE OTHER COLOR, WE
6 COULD JUST DO ALL OF THE REST IN ONE THIRD COLOR.
7 Q. YELLOW. I'M GOING TO PUT A KEY UP HERE SO THAT
8 WE REMEMBER (MARKING EXHIBIT).
9 A. YES. SO THAT'S "PM" FOR PHILIP MORRIS. I'LL DO
10 THAT.
11 Q. STICK THAT ON THAT SIDE, SINCE YOU'RE OVER THERE.
12 THAT'S IN BLUE. THEN YOU'RE GOING TO YELLOW.
13 THAT WILL BE THE REMAINDER.
14 A. I WILL JUST USE YELLOW FOR THE OTHERS. I HAVE
15 THAT DETAIL, BUT I DON'T THINK IT'S NECESSARY FOR THIS
16 CASE.
17 SO MAYBE I'LL -- LIGGETT & MYERS, BROWN &
18 WILLIAMSON, LIGGETT & MYERS, AMERICAN TOBACCO AND LORILLARD
19 BOTH.
20 TUESDAY, AMERICAN TOBACCO, AMERICAN TOBACCO,
21 BROWN & WILLIAMSON, BROWN & WILLIAMSON.
22 WEDNESDAY, DR. BEN CASEY, BROWN & WILLIAMSON, AND
23 MORE BROWN & WILLIAMSON HERE. DICK VAN DYKE AT 9:30.
24 LET'S SEE. AT 8:00 THERE, DR. KILDARE, THE JIMMY
25 DEAN SHOW, THE NURSES.
26 Q. YOU'RE GETTING GOOD EXERCISE.
27 A. YES. THIS IS ACTUALLY MORE DIFFICULT THAN IT

28 SEEMS HERE.

2132

1 I HAVE ANOTHER HALF-HOUR THERE. AND TWILIGHT
2 ZONE ON SATURDAY.

3 AND SUNDAY NIGHT, ED SULLIVAN. OKAY. THAT I
4 THINK PRETTY WELL DOES IT.

5 ALTHOUGH I SHOULD POINT OUT, THIS DOES NOT
6 INCLUDE SPECIAL EVENTS OR SPORTS.

7 Q. WHAT DO YOU MEAN?

8 A. WELL, R.J. REYNOLDS SPONSORED SIX MAJOR LEAGUE
9 BASEBALL TEAMS. NONE OF THAT IS SHOWN HERE.

10 PHILIP MORRIS SPONSORED THE NATIONAL FOOTBALL
11 LEAGUE. AGAIN, THAT'S NOT SHOWN HERE. THESE ARE JUST THE
12 SEASON-LONG COMMITMENTS FOR THE NETWORK FOR THESE PROGRAMS.

13 THERE ARE OTHER KINDS OF SPECIAL EVENTS, LIKE THE
14 OLYMPICS. THE WINTER OLYMPICS IN '64 WERE SPONSORED BY
15 TOBACCO.

16 YOU MAY NEED TO ASK SOME QUESTIONS HERE.

17 Q. JUST NOW AS A GENERAL PRINCIPLE, IF YOU WERE
18 WATCHING TELEVISION FROM 7:30 TO 11:00 P.M., WHAT WAS THE
19 LIKELIHOOD THAT YOU'D SEE A CIGARETTE AD?

20 A. 100 PERCENT. I MEAN, THERE ARE MANY
21 CIRCUMSTANCES HERE WHERE THERE'S CREATED SOMETHING WHICH IS
22 CALLED A ROADBLOCK.

23 Q. WHAT'S THAT?

24 A. A TERM IN ADVERTISING MEDIA, BUYING OR
25 ESSENTIALLY COVERING ALL THE EXITS, LIKE YOU'RE TRYING TO
26 PREVENT SOMEONE FROM GETTING OUT, YOU BLOCK -- PUT A
27 ROADBLOCK AT EVERY ROAD OUT OF TOWN.

28 YOU COVER EVERY NETWORK. THOSE CONSTITUTE

2133

1 ROADBLOCKS. NO MATTER WHICH CHANNEL YOU TURN TO, YOU SEE
2 CIGARETTE ADS.

3 THE TERM FOR THAT IS A "ROADBLOCK." THERE ARE
4 EIGHT ROADBLOCKS IN THIS OVERALL SCHEDULE, AND THE OVERALL
5 SCHEDULE COVERS THESE 42 DIFFERENT SHOWS THAT ARE
6 ADVERTISED -- 55 PERCENT OF ALL THE AVAILABLE TIME SLOTS ARE
7 ADVERTISED BY TOBACCO.

8 SO MORE THAN HALF OF THE TIME, YOU HAVE A
9 CIGARETTE SPONSOR.

10 SO IF YOU JUST TURN ON AT RANDOM, IF YOU'RE JUST
11 WATCHING SHOWS, HALF OF THE TIME YOU'D SEE A SHOW THAT WAS
12 SPONSORED BY A CIGARETTE COMPANY, SLIGHTLY MORE THAN HALF
13 THE TIME.

14 Q. OKAY. AND THERE WOULD BE BOTH THE NAME OF THE
15 CIGARETTE COMPANY, BROUGHT TO YOU BY SO-AND-SO, AS WELL AS
16 THE ADVERTISEMENTS THEMSELVES?

17 A. THERE WOULD BE SPOTS. THAT IS THE KIND OF
18 30-SECOND AD WE NOW KNOW, ALTHOUGH IN THIS DAY YOU WOULD
19 HAVE ALSO SEEN 60-SECOND ADS.

20 IN ADDITION, THERE WOULD BE THE SIGNOFFS,
21 SIGNS, THE TITLE, THE SUEDE SOMETIME BETWEEN SHOWS OR
22 BETWEEN HALF HOURS, "STAY TUNED FOR THE NEXT SECTION," AND
23 SO ON. "WE'LL BE BACK IN A FEW MINUTES," THAT KIND OF
24 THING.

25 SO THERE WOULD BE REPEATED MENTIONS OF THE
26 SPONSOR.

27 Q. OKAY. AND CAN YOU GIVE US AN IDEA WHAT SHOWS,
28 FOR EXAMPLE, PHILIP MORRIS WAS SPONSORING?

2134

1 A. FROM HERE, FROM THIS LIST, EAST SIDE/WEST SIDE,
2 THE RED SKELTON HOUR. THAT'S HERE (INDICATING).

3 Q. DO YOU WANT TO JUST JOT THAT IN?

4 A. (MARKING EXHIBIT))

5 RED SKELTON, WHO WAS A COMEDIAN WHO HAD A COMEDY
6 SKETCH HOUR.

7 Q. AND IN LOOKING AT THIS, HAVE YOU LOOKED AT WHAT
8 PERCENTAGE OF THE AUDIENCE WOULD BE CHILDREN WITH RESPECT TO
9 SOME OF THESE SHOWS?

10 MR. BARRON: OBJECTION, YOUR HONOR. VAGUE AND
11 AMBIGUOUS AS TO THE PHRASE "CHILDREN" WITHOUT RELATING TO A
12 PARTICULAR AGE GROUP.

13 THE COURT: WHY DON'T YOU CLARIFY THE QUESTION.

14 THE WITNESS: I HAVE --

15 THE COURT: WHEN I SUSTAIN AN OBJECTION, YOU
16 DON'T JUST GO AHEAD AND ANSWER.

17 I'M TELLING COUNSEL TO CLARIFY THE QUESTION, NOT
18 YOU TO CLARIFY THE ANSWER.

19 MS. CHABER: HE HAD HIS BACK TO YOU.

20 IN FAIRNESS, I THINK HE THOUGHT YOU WERE ASKING
21 HIM TO CLARIFY.

22 THE COURT: I WAS ASKING COUNSEL TO RESTATE THE
23 QUESTION. ALL RIGHT.

24 MS. CHABER: Q. IS THERE AN ANALYSIS OF THE
25 AGES OF THE AUDIENCE FOR CERTAIN OF THE SHOWS?

26 A. YES. THE ANALYSIS PERCEIVES TO CALCULATE THE
27 NUMBER OF EXPOSURES THAT CHILDREN UNDER THE AGE OF 13 WOULD
28 HAVE SEEN, THE NUMBER OF EXPOSURES THAT TEENAGERS WOULD HAVE

2135 SEEN, THE NUMBER OF EXPOSURES THAT ADULTS WOULD HAVE SEEN.
1 THAT'S THE BREAKOUT OF THE AVAILABLE DATA.

2 Q. OKAY. SO IT'S 13 OR UNDER?

3 A. YES. IT'S GENERALLY 12 OR UNDER. TEENAGE YEARS
4 ARE 13 THROUGH 17.

5 Q. OKAY. AND THEN THE ADULT AUDIENCE?

6 A. ADULT.

7 Q. WHAT OTHER SHOWS DID PHILIP MORRIS SPONSOR?

8 A. PHILIP MORRIS ALSO HAD RAWHIDE, WHICH WAS A
9 COWBOY SHOW, AND PERRY MASON, WHICH WAS A COURTROOM DRAMA.
10 ROUTE 66.

11 Q. I KNOW, BUT OTHERS MAY NOT.

12 WHAT TYPE OF SHOW WAS THAT?

13 A. ACTUALLY, I DON'T REMEMBER.

14 Q. ALL I REMEMBER IS "COOKIE, COOKIE, LEND ME YOUR
15 COMB."

16 MR. BARRON: THAT'S 77 SUNSET STRIP. THE WRONG
17 SHOW.

18 TWO GUYS IN A CORVETTE DRIVING DOWN ROUTE 66 WITH
19 A LOT OF EXPERIENCES.

20 THE WITNESS: 77 SUNSET STRIP.

21 MR. BARRON: IN A CONVERTIBLE CORVETTE, RED.

22 THE WITNESS: SO COOKIE BURNS WAS SPONSORED BY
23 R.J. REYNOLDS.

24 (ATTORNEYS CONFER)

25 THE COURT: I'M NOT SURE JUDITH GOT ALL THAT,
26 BUT I GUESS IT DOESN'T MATTER.

27 MR. BARRON: TRIVIA. ROUTE 66 ISN'T EVEN AROUND
28

2136 ANYMORE.

1 THE COURT: WE CAN ADJOURN EARLY AND DISCUSS
2 THIS.

3 MS. CHABER: YOUR HONOR, WE ARE GOING TO WATCH
4 TELEVISION BEFORE WE LEAVE TODAY.

5 THE WITNESS: ALFRED HITCHCOCK. THIS ONE IS
6 JACKIE GLEASON.

7 MS. CHABER: Q. AND WHAT TYPE OF SHOW WAS
8

9 JACKIE GLEASON?

10 A. A VARIETY SHOW. MUSIC AND HUMOR PRIMARILY. A
11 DANCE TROUPE THAT SANG AND DANCED AND A NICE ORCHESTRA. OF
12 COURSE, A LOT OF HUMOR.

13 Q. AND WHAT OTHER SHOWS DID YOU HAVE R.J. REYNOLDS
14 SPONSORING; 77 SUNSET STRIP?

15 A. THEY DID.

16 Q. WHAT ELSE DID THEY SPONSOR?

17 A. WAGON TRAIN.

18 JUROR NO. 12: THAT'S SUNSET BOULEVARD
19 (INDICATING).

20 THE COURT: JURORS, I NEED YOU NOT TO PITCH IN,
21 PLEASE.

22 THE COURT: HOLD ON. LET ME JUST --

23 MS. CHABER: WE LOST CONTROL HERE.

24 THE COURT: I'M SURE THE JURY WAS TRYING TO BE
25 HELPFUL. I NEED THE JURY TO STAY OUT OF THE TESTIMONY,
26 PLEASE.

27 MS. CHABER: Q. YOU CORRECTED THAT TO 77
28 SUNSET STRIP, WHICH TAKES PLACE ON SUNSET BOULEVARD, BUT

2137 1 THAT'S A DIFFERENT MOVIE.

2 Q. SO YOU HAVE WAGON TRAIN, TO TELL THE TRUTH. AND
3 THAT WAS A QUIZ SHOW?

4 A. TO TELL THE TRUTH, YES.

5 AND HERE'S THE BEVERLY HILLBILLIES. AND THE
6 BEVERLY HILLBILLIES, YOU KNOW, IS A COMEDY BASED UPON PEOPLE
7 FROM THE OZARKS MIGRATING TO CALIFORNIA.

8 Q. THEY STRUCK OIL AND ENDED UP IN BEVERLY HILLS?

9 A. GOT RICH AND CAME HERE TO SPEND THEIR MONEY.

10 Q. WHAT WAS THE ONE THAT YOU PUT BEFORE; GLYNIS?

11 A. GLYNIS.

12 Q. WHAT'S THAT?

13 A. I DON'T RECALL.

14 ACTUALLY, BEVERLY HILLBILLIES WAS BY FAR THE MORE
15 SUCCESSFUL SHOW. IT WAS ONE OF THE BIGGEST SHOWS OF THE
16 WHOLE SEASON.

17 THIS WAS SATURDAY NIGHT AT THE MOVIES. GARRY
18 MOORE.

19 Q. AND THAT WAS A VARIETY SHOW AS WELL?

20 A. YES.

21 CAROL BURNETT. THE COMEDIENNE, CAROL BURNETT,
22 LAUNCHED HER CAREER ON THAT SHOW.

23 Q. I DON'T WANT YOU TO GO THROUGH AND PUT IN ALL THE
24 OTHER SHOWS, BUT I THINK YOU HAD MENTIONED THAT THERE WERE A
25 COUPLE OF DOCTOR AND NURSE SHOWS.

26 A. BEN CASEY. THREE THAT HAD A MEDICAL THEME.

27 BEN CASEY WAS A DOCTOR.

28 Q. WOULD YOU JUST STICK THAT ONE IN.

2138 1 A. THAT WAS HERE (MARKING EXHIBIT).

2 Q. DID HE ACTUALLY SMOKE ON THE SHOW?

3 A. YES.

4 DR. KILDARE. WHERE WAS DR. KILDARE? HERE, I
5 BELIEVE. THURSDAY ON ABC.

6 DR. KILDARE AND HIS BOSS, DR. GILLESPIE, BOTH
7 SMOKED AND --

8 Q. DR. GILLESPIE PLAYED THE HEAD OF THE DEPARTMENT
9 OR THE HEAD OF THE HOSPITAL?

10 A. THAT'S CORRECT.

11 AND THE NURSES WAS ALSO ON THURSDAY. THIS WAS
12 ANOTHER MEDICAL THEME SHOW SPONSORED BY TOBACCO.

13 Q. NOW, WERE THERE ANY SHOWS THAT YOU HAVEN'T PUT IN

14 THERE, THE TITLE OF THE SHOW, WHICH HAD AN AUDIENCE THAT
15 INCLUDED CHILDREN 12 AND UNDER?

16 A. YES.

17 MR. ESCHER: OBJECTION. VAGUE, YOUR HONOR.
18 YOU MEAN ONE -- I DON'T MEAN TO ARGUE. I THINK
19 THAT IT'S VAGUE AS TO THE QUANTITY.

20 THE COURT: YES, IT IS.

21 I'M GOING TO STRIKE THE ANSWER.

22 YOU NEED TO LET US KNOW WHEN GET TO A LOGICAL
23 BREAKING POINT FOR THE DAY.

24 I DO HAVE ANOTHER MATTER. IF YOU CAN FINISH WITH
25 THIS CHART IN THE NEXT COUPLES OF MINUTES, YOU CAN.

26 MS. CHABER: I THOUGHT WE WERE GOING TO 4:30.

27 THE COURT: I'M GOING TO QUIT A LITTLE BIT
28 EARLY. I HAVE SOME PEOPLE THAT ARE PATIENTLY WAITING.

2139

1 IF CAN YOU FINISH WITH THE CHART IN THE NEXT FEW
2 MINUTES.

3 MS. CHABER: I WAS GOING TO FINISH THE VIDEO.
4 IT'S VERY SHORT. IT DOESN'T NEED TO BE REPORTED.

5 THE COURT: LET'S DO THE CHART. WE'LL DO THE
6 VIDEO TOMORROW.

7 ANYWAY, I STRUCK THAT LAST ANSWER, BECAUSE YOUR
8 QUESTION WAS VAGUE, WITHOUT PREJUDICE.

9 MS. CHABER: Q. HAS THERE BEEN AN ANALYSIS OF
10 THE PERCENTAGE OF CHILDREN IN THE CATEGORIES THAT YOU DEFINE
11 AS UNDER 12 AND OVER 12?

12 A. YES. AND -- YES, AND THE NUMBER OF EXPOSURES
13 THOSE CHILDREN HAVE SEEN, THE AVERAGE CHILD WOULD HAVE SEEN
14 IN THE AVERAGE WEEK OR MONTH OR YEAR.

15 Q. OKAY. SO IT'S NOT NECESSARILY SPECIFIC TO SHOW
16 BY SHOW?

17 A. IT'S NOT SHOW BY SHOW, ALTHOUGH THAT DETAIL OF
18 DATA WAS AVAILABLE AND IS WHAT WAS CONVERTED INTO
19 CALCULATING THE ESTIMATES.

20 Q. AND IN TERMS OF DEALING WITH WORKING ON THE 1994
21 SURGEON GENERAL'S REPORT ON YOUTH, WAS THERE A NUMBER, A
22 PERCENTAGE OF PEOPLE UNDER 12 AND IN THE 13 TO 17 YEAR
23 CATEGORY THAT WAS CONSIDERED A SIGNIFICANT AUDIENCE WITH
24 RESPECT TO COMMERCIALS?

25 MR. ESCHER: YOUR HONOR, OBJECTION. CALLS FOR
26 HEARSAY.

27 THE COURT: SUSTAINED.

28 MS. CHABER: Q. ARE THERE ANY SHOWS HERE THAT

2140

1 HAD A GREATER THAN 20 PERCENT VIEWERSHIP OF CHILDREN IN THE
2 12 AND UNDER CATEGORY?

3 MR. ESCHER: OBJECTION. LACK OF FOUNDATION.

4 THE COURT: OKAY. YOU ARE GOING TO NEED A LAY A
5 FOUNDATION.

6 MS. CHABER: Q. WAS THERE AN ANALYSIS MADE OF
7 THE SHOWS THAT WERE ON, AND THE PERCENTAGE OF VIEWERSHIP OF
8 THOSE SHOWS WITH RESPECT TO CHILDREN UNDER THE AGE OF 12?

9 A. YES. BOTH --

10 THE COURT: DON'T TELL US WHAT THE INFORMATION
11 WAS. YOU HAVE ANSWERED THAT QUESTION.

12 GO AHEAD. YOU CAN COMPLETE YOUR ANSWER, WITHOUT
13 GIVING US THE SUBSTANCE OF THE INFORMATION.

14 YOU CAN GO AHEAD.

15 THE WITNESS: YES, BUT BOTH ON AVERAGE, FOR THE
16 AVERAGE AND SHOW BY SHOW.

17 MS. CHABER: Q. SO THE INFORMATION THAT YOU
18 DESCRIBED EARLIER THAT YOU RELY ON ESTABLISHES SHOW BY SHOW

19 WHAT THE PERCENTAGE OF CHILDREN UNDER THE AGE OF 12 VIEWING
20 PARTICULAR SHOWS WERE; IS THAT CORRECT?

21 A. YES. I HESITATE, BECAUSE I DON'T RECALL OFF THE
22 TOP OF MY HEAD WHETHER I HAD THE BREAKDOWN UNDER 12 OR JUST
23 MINORS; THAT IS, UNDER THE AGE OF 18.

24 I THINK BOTH ARE IN THE REPORT THAT I WROTE AND
25 PUBLISHED IN THE PEER-REVIEWED JOURNALS.

26 Q. AND IN TERMS OF MINORS, WERE THERE CERTAIN SHOWS
27 THAT HAD A PERCENTAGE OF MINOR VIEWERS THAT WAS GREATER THAN
28 10 PERCENT?

2141

1 MR. BARRON: JUST FOR CLARIFICATION, ARE YOU
2 TALKING ABOUT 10 PERCENT OF ALL MINORS IN THE COUNTRY, OR WE
3 ARE TALKING ABOUT --

4 MS. CHABER: I'M ASKING --

5 THE COURT: GO AHEAD. STATE YOUR OBJECTION.

6 MR. BARRON: I'M ASKING FOR A CLARIFICATION.
7 ARE YOU TALKING ABOUT 10 PERCENT OF ALL MINORS IN THE
8 COUNTRY OR 10 PERCENT OF ALL THE PEOPLE WATCHING THE SHOW AT
9 THAT PARTICULAR HOUR?

10 MS. CHABER: Q. DOCTOR, DID YOU UNDERSTAND MY
11 QUESTION TO MEAN THE PERCENTAGE OF THE VIEWERSHIP OF THAT
12 SHOW WHICH WERE MINORS?

13 A. YES.

14 Q. WERE THERE SHOWS THAT YOU DETAILED HERE THAT HAD
15 A PERCENTAGE OF MINOR VIEWERSHIP GREATER THAN 10 PERCENT OF
16 THE PEOPLE WATCHING THE SHOW?

17 A. YES.

18 Q. AND WERE THERE -- IS IT BROKEN DOWN BY
19 PERCENTAGE?

20 A. YES.

21 Q. WERE THERE SHOWS THAT HAD GREATER THAN 20 PERCENT
22 VIEWERSHIP OF MINORS?

23 A. YES. IN FACT, ON AVERAGE, THE PERCENTAGE --

24 MR. BARRON: YOUR HONOR, I THINK HE IS GOING
25 BEYOND THE QUESTION. I DON'T MIND.

26 THE COURT: YOU HAVE ANSWERED THAT QUESTION.
27 WHAT YOU ARE ABOUT TO TELL US GOES BEYOND THE
28 SCOPE OF THAT QUESTION. WE'LL HAVE TO WAIT FOR THE NEXT

2142

ONE.

2 MS. CHABER: Q. WERE THERE SHOWS THAT HAD A
3 PERCENTAGE VIEWERSHIP OF GREATER THAN 30 PERCENT MINORS?

4 A. YES.

5 Q. CAN YOU IDENTIFY A SPECIFIC SHOW AND A SPECIFIC
6 PERCENTAGE MINOR VIEWERSHIP? IS THAT POSSIBLE TO DO?

7 A. I CAN DO A LITTLE OF THAT FROM MEMORY. WITH
8 REFERENCE TO THE PAPERS I HAVE PUBLISHED, I CAN DO A LOT OF
9 IT.

10 Q. COULD YOU JUST GIVE US AN EXAMPLE OF A SHOW THAT
11 HAD A GREATER THAN 10 PERCENT VIEWERSHIP THAT WAS MINORS?

12 A. THE BEVERLY HILLBILLIES SHOW HERE.

13 Q. WHAT WAS THE PERCENTAGE OF VIEWERSHIP OF MINORS?
14 A. I BELIEVE THE PERCENTAGE VIEWERSHIP OF MINORS

15 OVER THE SEASON WAS 38 PERCENT.

16 Q. OKAY. ANY OTHER SHOWS THAT HAD 10 PERCENT OR
17 GREATER VIEWERSHIP THAT WERE MINORS?

18 A. 10 PERCENT OR GREATER?

19 Q. YES.

20 A. OH, I WOULD SAY PROBABLY ALMOST ALL THE SHOWS HAD
21 10 PERCENT OR GREATER --

22 Q. HOW ABOUT 20 PERCENT?

23 THE COURT: MS. CHABER, PLEASE.

24 MS. CHABER: I'M SORRY.
25 THE COURT: GO AHEAD. FINISH YOUR ANSWER.
26 MS. CHABER: Q. YOU CAN'T DEFINE THAT
27 SPECIFICALLY?
28 A. THE LIST I RECALL IDENTIFIED THOSE WITH 30
2143 PERCENT OR GREATER. THEY WERE THE ONES WHO WERE ABOVE
1 AVERAGE.
2 Q. CAN YOU IDENTIFY WHICH OTHER SHOWS BESIDES THE
3 BEVERLY HILLBILLIES THAT HAD A 30 PERCENT OR GREATER
4 VIEWERSHIP --
5 A. THE SHOWS --
6 Q. -- THAT WERE MINORS?
7 THE COURT: THE TWO OF YOU ARE GOING TO HAVE TO
8 TALK ONE AT TIME. IT'S GETTING LATE. MAYBE WE SHOULD
9 QUIT. ARE WE ALMOST DONE?
10 MS. CHABER: WE'RE ALMOST DONE. I DON'T WANT TO
11 COME BACK TO THIS, YOUR HONOR.
12 THE WITNESS: IT'S A FAIRLY BRIEF LIST. FOR
13 PHILIP MORRIS, THE SHOWS WERE JACKIE GLEASON AT 38 PERCENT
14 OF ITS AUDIENCE BEING YOUTH, GLYNIS AT -- EXCUSE ME -- RED
15 SKELTON AT 37 PERCENT OF ITS AUDIENCE YOUTH, ROUTE 66 AT 31
16 PERCENT.
17 FOR R.J. REYNOLDS, THE SHOWS OVER THIS 30 PERCENT
18 CRITERION WERE BEVERLY HILLBILLIES AT 38 PERCENT, GLYNIS AT
19 44 PERCENT, MCHALE'S NAVY AT 40 PERCENT, SUNSET STRIP AT 32
20 PERCENT, AND SATURDAY NIGHT AT THE MOVIES AT 32 PERCENT.
21 MS. CHABER: Q. OKAY. AND ON AVERAGE, HOW
22 MANY CIGARETTE ADVERTISEMENTS WOULD MINORS SEE IF THEY WERE
23 WATCHING TELEVISION AT THIS TIME PERIOD FOR THESE HOURS?
24 MR. BARRON: OBJECTION. VAGUE AND AMBIGUOUS AS
25 TO TIME PERIOD, YOUR HONOR.
26 MS. CHABER: 1963 WE ARE TALKING ABOUT, AND WE
27 ARE TALKING ABOUT FROM 7:30 TO 11:00.
2144
1 THE WITNESS: CHILDREN UNDER THE AGE OF 13 WOULD
2 HAVE SEEN 845 CIGARETTE COMMERCIALS IN THAT YEAR.
3 MS. CHABER: Q. THIS IS AN AVERAGE?
4 A. THE AVERAGE CHILD WOULD HAVE SEEN 845. OF
5 COURSE, IF YOU HAD WATCHED MORE THAN THE AVERAGE AMOUNT OF
6 TELEVISION, THEY WOULD HAVE SEEN THAT MUCH MORE. THE
7 AVERAGE TEENAGE WOULD HAVE SEEN 1350 CIGARETTE COMMERCIALS.
8 MS. CHABER: I THINK WE CAN END THERE.
9 THE COURT: OKAY.
10 MS. CHABER: YOU DID WANT TO STOP?
11 THE COURT: I DID. IT'S 4:30.
12 MS. CHABER: SORRY.
13 THE COURT: NOT QUITE.
14 DR. POLLAY, WHY DON'T YOU RETURN TO ONE SEAT OR
15 THE OTHER, PLEASE.
16 JURORS, OVER THE COURSE OF THE EVENING, PLEASE DO
17 NOT DISCUSS THIS CASE WITH ANYONE OR LET ANYONE DISCUSS IT
18 WITH YOU. PLEASE DON'T FORM OR EXPRESS ANY OPINIONS ABOUT
19 THE CASE.
20 COUNSEL, A QUICK QUESTION. I WAS GOING TO
21 PROPOSE -- I HAVE ANOTHER MATTER TOMORROW MORNING BEFORE THE
22 TRIAL, WHICH IS GOING TO TAKE ME TO 9:30.
23 I WAS GOING PROPOSE TO HAVE THE JURY IN HERE AT
24 9:30, UNLESS ANY OF YOU WANTED IT TO BE LATER.
25 IF YOU DO, SPEAK UP.
26 SHALL WE START AT 9:30?
27 MS. CHABER: I UNDERSTOOD WE WOULD DEAL WITH THE
28 COURT LATER TONIGHT. SO I THINK 9:30 IS FINE.

2145

1 MR. BARRON: 9:30 IS FINE.

2 THE COURT: IT'S PROBABLY AN APT DESCRIPTION OF

3 IT TOO.

4 MS. CHABER: LATER TONIGHT.

5 THE COURT: OKAY.

6 ALL RIGHT, JURORS. WE'LL START TOMORROW AT

7 9:30. HAVE A GOOD EVENING.

8 (THE PROCEEDINGS ADJOURNED AT 4:30 P.M.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28